

**MOLOKAI PLANNING COMMISSION
REGULAR MEETING
MARCH 9, 2011**

*** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. ***

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Steve Chaikin at 12:13 p.m., Wednesday, March 9, 2011, at the Mitchell Pauole Center Conference Room, Kaunakakai, Molokai.

A quorum of the Commission was present. (See Record of Attendance.)

A. CALL TO ORDER

Mr. Steve Chaikin: Alright. It's March 9th 2011. And at this time, I'd like to bring this meeting of the Molokai Planning Commission to order. And today we are particularly honored because we have in our presence the Director of the Maui County Planning Department, Will Spence; and also, the Deputy Director, Michele McLean. So we're gonna hear from them just in a moment, but before that, let me just recognize the other members of the Maui County Planning Staff that are here present today. We have Clayton Yoshida, the Planning Program Administrator. And from Long Term, we have Dave Yamashita. We also have our own Molokai Staff Planner, Nancy McPherson; also, our Secretary of Boards and Commissions, Suzie Esmeralda; and also, sitting to the left of me from Corporation Counsel, Mr. Michael Hopper. The Commissioners present here today: we have Vice-Chair Sprinzel, and Commissioners Kalipi, Bacon, Kelly, and Buchanan. And with that, we'll move on with our agenda.

B. PUBLIC TESTIMONY ON ANY PLANNING OR LAND USE ISSUE

Mr. Chaikin: And after the Call to Order, we have Item No. B, and that's where we provide an opportunity for anybody from the public to come forward with any particular land use issue or planning issue that you think that we should be made aware of. So is there anybody here that would like to provide testimony on any of that or any other agenda item where they don't wanna wait till the agenda comes up? Alright, seeing none, we can go ahead and move ahead to Announcements.

C. ANNOUNCEMENTS

- 1. The Commission would welcome any testimony relating to proposed amendments to its existing rules for its Subcommittee on Rule Changes.**

Mr. Chaikin: And the announcement is just notifying the public that we are in the process of amending the rules of this Commission works under. And we do have that on our agenda further on today, so we will take that up in more detail later on, on the agenda.

D. INTRODUCTION OF PLANNING DIRECTOR WILL SPENCE AND DEPUTY DIRECTOR MICHELE CHOUTEAU McLEAN

Mr. Chaikin: Now, as I mentioned earlier, we do have in our presence today, the new Director of Maui County Planning Department, Mr. Will Spence. And let me say that it is an honor and a privilege to have you here today. You are an important part of the future of this community. So with that, I'd just like to say thank you for coming, and if you'd like to say a few words, that'll be great.

Mr. Will Spence: Okay. Commissioners, members of the public, it's nice to meet you. My name is Will Spence. I am the new Planning Director. It's really nice to be back on Molokai. I know some faces, but others, I don't. I was a Staff Planner here way back when, when we did the community plans. I also staffed for some certain projects that were coming up. So it's been a long time since I've been here, but it's really nice to come back. I'm familiar with so many of the issues on the island. And I'm really looking forward to working with you. Thank you much. And we're available.

Mr. Chaikin: I'm sorry?

Mr. Spence: We're available. I can speak for Michele and myself. We're available. Give our office a call, if there were questions come up, whatever.

Mr. Chaikin: Well, we appreciate that. And it's great to have you here. You can get a little bit of the flavor of what goes on here at our meetings, so thank you. Michelle, could we get you to say a couple words so we can get to know you just a little bit better? Thanks.

Ms. Michele McLean: Good afternoon, Commissioners. Aloha, Molokai. My name is Michele Chouteau McLean. I'm very happy to be here as well. I first met Will years ago when he was a Staff Planner. I used to work for the Maui County Council as a Committee Analyst back when Pat Kawano was a Council Member. And I staffed the Planning Committee back then, so came over for site inspections and night meetings. And I was there for about six years or so. That was in the mid – early mid '90s. So it is very nice to be involved with Planning again and back on Molokai again. For the last five years or so, I was the Deputy Director for the Kahoolawe Island Reserve Commission, the State agency responsible for the restoration and management of Kahoolawe. So had some fantastic experiences there, but that's where I gained my administrative experience. So Will and I as a team heading up the Planning Department compliment each other. But, yeah, we definitely wanna make ourselves available of course to the community, but to the

Commissioners as well. And, yeah, hope to make this a regular thing, not just a one-time hello, but come back and see you folks when we can. So thank you very much.

Mr. Chaikin: Thank you, Michele. And we do look forward to working with you in the weeks and months to come. Alright, moving on with our agenda.

E. APPROVAL OF MINUTES OF THE DECEMBER 8, 2010 MEETING

Mr. Chaikin: We have some housekeeping that we need to take care of. And that has to do with approving some minutes from the December 8th meeting. Is there any Commissioners that would like to make any additions, corrections, notations? Now would be an opportune time to do that. If not, I'll entertain a motion at this time.

Mr. John Sprinzel: I propose a motion to accept the minutes of the December the 8th meeting.

Mr. Chaikin: Okay, we have a motion on the floor, Commissioner Sprinzel. Seconded by Commissioner Bacon. Any further discussion on this?

There being no further discussion, the motion was put to a vote.

It was moved by Mr. Sprinzel, seconded by Mr. Bacon, then unanimously

VOTED: To approve the December 8, 2010 meeting minutes.

Mr. Chaikin: It passes unanimously. Thank you, Commissioners. And with that, we can just move along with our meeting under Item F, and that is a status report on the Molokai Community Plan Update.

F. STATUS REPORT ON THE MOLOKAI COMMUNITY PLAN UPDATE - LONG RANGE DIVISION, PLANNING DEPARTMENT

Mr. Chaikin: That's our long range plan. And it's been a long time in coming. And it is a – we're finally getting to the point where we're starting to get this thing in gear. So, Dave, thanks for coming. Thanks for giving us an update, and looking forward to hearing what you have to say.

Mr. David Yamashita: Alright. Thanks very much, Steve. And thank you all for accommodating our schedule. And I apologize for the cancellation last month. So I appreciate your helping me with this.

I'm gonna today just spend a few minutes briefing you on our community plan process and where we are today. And I think most of you have this handout. I'd like to go through our handout. We mailed them last month. Okay, Suzie's--

Ms. Lori Buchanan: That was last month.

Mr. Yamashita: That was last-- I don't wanna send more stuff unless you really need it. But I'm gonna use a little diagram on the back because it's a very simple way to describe where we are in the process. And if you look on the back page, there's a very simple diagram, and there's a little box that says "We are here in the process." And so we've done -- we started really doing a lot of work in -- last year, 2010, with background data on research. We had three community events. And so we're now at the point where what we're doing is to try and synthesize and pull all this information together. And there's a lot of information because we had at least I'm guessing somewhere in the order of maybe 30 or more interviews with people. We're still doing them. Every time we come over, we try and talk to people. We've met with different groups. We've done research. And like I said, we had the three community events.

So what we're doing now is putting all the information that we've gotten and try to summarize it into kinda what you see on the inside. So there's a list of general categories of issues, and then also a list of issues, and some ideas based on what we heard for strategies and actions. And these are again, this is just a summary of the workshop we had in October, so it's not a complete list. But I think it'll give you a sense of what we've been hearing. And I will tell you that they're generally consistent. We tend to have heard some of the same things about diversifying the economy, try to create more diversified agriculture, create more jobs, dealing with siltation, building strength that's in the island, protecting cultural resources. And so I think there's a kind of uniformed set of issues that have emerged. So what we're trying to do again is to summarize these, and then translate them into some ideas that we can then present in a draft document to the CPAC.

So let me talk a little bit about CPAC because that seems to get a lot of questions--the Community Plan Advisory Committee. And where we are right now is we'll be sending up -- sending a resolution to the Council probably in the next few weeks for them to start the process of creating the CPACs. Now, what's interesting about this whole process is we send the resolution up to the Council, and the Council establishes the process. So they're the ones who determine whether you send in an application, a resume, or whatever else is needed. So they're the ones who decide both the process and they also decide in part, who gets appointed to the CPAC. There are going to be 13 people, and this is all mandated by County Code, 2.80(B), and so nine of the 13 are appointed by the Council. Four are appointed by the Mayor. So again, once we send the resolution up then it'll really be the kuleana of Council to decide both the process, and then start the whole selection process.

Once the CPAC is formalized and established, then we can begin the CPAC part of the whole process, which is shown on the diagram in the back. You'll see "Community Plan Advisory Commission Meetings," but we don't start that until we are ready to have them review something. So we're not quite sure when that's going to be. We hope to have a draft document for the CPAC to at least start meeting in late summer. That's generally the schedule.

So again, we're reviewing all the information and trying to organize them at the different strategies, and actions, and issues, and then present it to the CPAC, and then also sending the resolution up. So that in a nutshell is kinda the five-minute version of where we are right now.

Mr. Chaikin: Thank you, Dave. Commissioners, do you have any questions? Commissioner Buchanan?

Ms. Buchanan: So the CPAC that was previously convened or – what was that?

Mr. Yamashita: You mean for the last community plan—?

Ms. Buchanan: I don't know if it was for the last community, but the lady sitting right there that said they sitting on the CPAC. So I was just wondering.

Mr. Yamashita: Oh, maybe the GPAC. You were on GPAC, right.

Ms. Buchanan: GPAC?

Mr. Yamashita: Right.

Ms. Buchanan: But turn into a CPAC.

Mr. Yamashita: Okay, this is – it's more than just changing the letter. This question has come up and our response has been that the Planning Department is going to advocate that members from the GPAC be appointed to the CPAC. Having said that, remember, we're not the ones who make the decision. It's the Council that makes the decision. So what we have done, though, is to – and I don't know if anybody contacted you, but we tried to get a hold of people who were on the Molokai GPAC. We tried to get a hold of them and asked them if they're even interested because we're gonna send that information up to Council. So did you get a phone call or—?

Unidentified Member in the Audience: No, but—

Mr. Yamashita: No? Okay, well—

Unidentified Member in the Audience: . . . (inaudible) . . .

Mr. Yamashita: Yeah, we heard that as well, yeah. So anyway, so that's the role of the GPAC as it relates to the CPAC.

Mr. Chaikin: Any other Commissioners have any other questions? Dave, you know, the whole community plan process is supposed to be by the community and for the community. But I'm just wondering how the community is gonna stay abreast of everything and knowledgeable about the whole process. And we had talked previously about e-mail—whether or not people can get on an e-mail list, and whether or not you're even allowed to send out bulk e-mails. Can you speak to that a little bit of how you're gonna get everybody informed and up to date on the process?

Mr. Yamashita: Right. That's a good question, Steve. We want to do e-mails, maybe bulk e-mails. We have information on the web site right now. We don't have a lot to put up, but the idea is to put more information up and to do these little newsletters. But after that, Steve, I think we're open to other ideas because you know how to get the word out.

Mr. Chaikin: Well, you know, I think, you know, today, most people have computers. Most people have e-mail. Today, we're having an update on the community plan which is very important, but probably nobody knew about it. It's just kind of indicative of something that we should be aware of as we move through this process. So whatever we can do to change that and make this process more effective to include as much of the community as we can. I think that would – in order to a benefit of a successful end result.

Mr. Yamashita: Okay. No, that's a good point. And I will say, too, that if anybody, like Will and Michelle, wants to call and offer suggestions, or criticism, or whatever, I'll give you my phone number: 270-8290. You can call me.

Unidentified Member in the Audience: Again, slow.

Mr. Yamashita: 2 – right, sorry, 270-8290, and my name is Dave. But again, you know, we are interested in having an interactive conversation with the community.

Mr. Chaikin: Okay, well, with that, if there's anybody from the community that wants to ask any questions about the process, or they have any more concerns, you're welcome to come up to the mike, and then we can just be informal about this. Do you have anything that you – any of you wanna know about the community plan process? Alright.

Unidentified Member in the Audience: . . . (inaudible) . . . Your name? What's your name?

Mr. Yamashita: Dave, oh, Yamashita. Not related. Just so that – for the record, not related to anybody here. I'm from Oahu.

Mr. Chaikin: Okay. Alright, Commissioners, any other final questions or thoughts before we move on? Alright, seeing none, thank you, Dave, for being here and giving us an update on the process.

Mr. Yamashita: Alright, thank you, Steve.

Mr. Chaikin: With that, we can move on with our agenda to Item G, which is Communications. The Director had made a determination that the Acoba pole installation should be exempt. And we'd like maybe Nancy to come up here to give us some more information on that, and we'll see whether or not we concur.

G. COMMUNICATIONS

- 1. MR. WILLIAM SPENCE, Planning Director, requesting concurrence from the Molokai Planning Commission pursuant to their Special Management Area Rules, as amended, that a Special Management Area (SMA) exemption can be issued for the following:**
 - a. IRIS PEELUA of EXPEDITING SERVICES on behalf of MS. ESTEFANIA ACOBA submitting an amended Special Management Area Assessment in order to amend the prior Special Management Area Exemption to include a power pole installation and construction for property situated in the Interim District at 220 Seaside Place, TMK: 5-3-006: 004, Kaunakakai, Island of Molokai. (SMX 2008/0442) (SM5 2010/0035) (Valuation of amendment action: \$7,500) (N. McPherson)**

Ms. Nancy McPherson: Aloha kakou, Commissioners. I'm Nancy McPherson, Staff Planner. This item is for a power pole that is to be installed after a home that was issued an exemption previously. It came to you previously as a single family dwelling and carport, and a demolition of a small cottage. So one thing I'd like to mention is that the SM5 number is on your report, and it shouldn't be on there because this hasn't – this specific thing hasn't been issued an exemption yet. That's why it's coming to you because we're requesting you to concur with our recommendation for exemption for power pole installation.

Based on– This is a request of the property owner. Mrs. Acoba wanted to install another pole halfway down her property line to go to the new house. She didn't want to run a line

from the front house to the makai house. So she wanted to have it running off of a separate pole. So she requested that MECO do this for her, and she submitted an SMA assessment. What they actually requested was an amendment. So what we're doing is we're amending the previous assessment to add the power pole, in a sense. And we are then requesting that you give us a new exemption for this power pole. We cannot amend an exemption and I think we've told you that before. It doesn't work that way for Molokai, especially. So what I did do to follow up on the discussion at our last meeting about MECO doing excavations for power poles was I did speak to Wayne Okazaki of MECO. And we discussed at length the way that MECO handles the issue of inadvertent discovery of human remains and burials. And he told me that they use the crew here on Molokai. They send the supervisor over from the Maui, but the guys doing the work are from Molokai, but they're supervised by a MECO person from Maui. And they are all trained in the proper way to respond to these kinds of inadvertent discoveries. So he assured me that the guys doing the work know what to do, if anything is discovered. Now, that's – that is as far as I got with that. I wasn't able to get anything in writing, but I did let him know that this was a concern of the Molokai Planning Commission, and I did invite him to come and speak to you today or be present today, and he was not able to do that so–

Because the project was – the parent project of the main – the house, was previously exempted, it received State Historic Preservation review. The – which involved some excavation, some relatively shallow excavation for footings for the new house and carport. So there is a State Historic Preservation letter that does state, "We have previously stated that because this Exhibit A-5, we have–", "Because the subject parcel has already been heavily modified by residential development, it's unlikely that historic sites are present. Therefore, we believe that the currently proposed project is unlikely to have an effect on historic properties and should be allowed to proceed." Now, we all know I have about ten or 15 projects right now that are in hiatus waiting for SHPD comment letters from Maui. I'm working with the archaeologist who tried to expedite to the point where another applicant for another project actually flew to Oahu, to go to Kapolei, to the SHPD Office to get copies of archaeological surveys to bring to Maui to give to SHPD so that they can do their review. So that's kind of the situation we're in. It's a very difficult situation.

And so in this case, we feel that because of the review that was done previously that we think we can bring this to you with a recommendation for exemption for the power pole installation based on a previous review done for the project. We respectfully request that you concur with our assessment and our recommendation.

Mr. Chaikin: Alright, well, thank you, Nancy. And you know, in a perfect world, it all comes to us in one application, but in the real world, I think that evidently things will pop up, and we'll have to take a second look. And this is just an example of that. So, Commissioners, do you have any questions or concerns? Commission Buchanan?

Ms. Buchanan: Okay, I no understand, Nancy. So you asking us today – you are asking for an amendment of the previous SMA assessment?

Ms. McPherson: Well, again, like the Chair said, in a perfect world, this would've all come in together at the same time. We are actually– I retract that. We are not– Well, I take it back. I am saying the SMA assessment amendments proposed action. So what we're doing is we're amending the SMA assessment to add the power pole, and then we are requesting an exemption for the proposed action because the other parts of it have already been approved, and the house is already built, actually.

Ms. Buchanan: Okay, because I'm not inclined to do that.

Ms. McPherson: Okay.

Ms. Buchanan: So I not inclined to amend a previous assessment. I would, however, view the installation of the power pole as a separate project.

Ms. McPherson: Well, maybe I'm confusing you. I apologize. Because basically, I did a new assessment for this. And the Department would be the one that would amend the assessment, but we don't have to say that. We can strike that. This is a new assessment. It's not amending the other assessment. And I believe we can check with Mike, but I believe we can do that. The idea was that basically, this power pole should've come in with the original project.

Ms. Buchanan: Okay, why is the applicant requesting a separate pole because during the first assessment, she had the ability to get power to the new building? Is that correct?

Ms. McPherson: I went over there and did a site visit. I took photographs. Those are your Exhibit A-8. And I asked the guys who were asking on the house. I said, "You guys have power over here?" And he said no. So they didn't have a temporary power – temporary utility hookup for the new house. They're not living there yet, no, no. Well, when I was there, it wasn't finished yet. And I was told that both of them . . . (inaudible) . . . So there is a house in the front. That's a rental. And that house has power. But what I was told by MECO was that – and by Luigi Manera who was the consultant on the first project who actually would be helpful if he was here, but the owner did not wish to connect the front house to the back house for power because I guess maybe it's because it's a rental. She gets a separate meter. I'm not exactly sure, but it was her choice. And maybe she decided after the previous SMA was granted.

Mr. Chaikin: Maybe we could just ask Michael. If this particular agenda item was agended to amend a previous exemption, and I'm just wondering if we can't, as Commissioners,

change the agenda item to just be requesting an assessment. And then the Planning Department can modify their recommendation.

Ms. McPherson: We're not amending the exemption. We're amending the assessment.

Mr. Chaikin: Right. That is correct. And that's why we wanna change the agenda to reflect that they're coming in for an assessment and a new exemption.

Ms. McPherson: Yeah, because this is a new number, I believe. It's got a number.

Mr. Chaikin: Yeah, you had previously said that you can't amend exemptions. So they have to come in for a new – go through the new assessment process, and then get issued a new exemption.

Ms. McPherson: Right, that's the way I handled it, in actuality.

Mr. Chaikin: Okay. This is just agended different than that and your recommendation doesn't reflect that so – but if we could change that. But let's just check from Corp. Counsel. It's really a minor change. It's just – let's just see if we can go ahead and do that. Can you comment on that?

Mr. Michael Hopper: Well, normally if you were going to change this to a minor permit, I would say no, but in substance, you're still granting an exemption. The issue would be is that change an item of major importance to a large number of people. That's what the standard is for the Sunshine Law. And to change the agenda to add something to your agenda, you would need to take a two-thirds vote. It is on here as an exemption. It's just amending an SMA assessment which is not really being done. You've got a new assessment. And I'm not sure why it was done this way. It really should've come as just a separate assessment for a different – because it's a different project. And it sounds like in substance, that's what actually happened. So if you wanted to take a vote to amend your agenda, I think you'd need a two-thirds vote to do that to reflect that this is a new exemption rather than an amendment to a previous one. I mean, I think you could do that. I don't think that change is something that's so substantive as, you know – usually, we'd say no, but I think this is a very, minuscule change.

Mr. Chaikin: Okay, that was a yes. So what I guess I'll do is I'll entertain a motion that this Commission change the agenda to say, "Iris—" I guess in Communications 1-a that it say:

Iris Peelua of Expediting Services on behalf of Ms. Estefania Acoba submitting a Special Management Area Assessment for a power pole installation and construction for property situated in the Interim District

**at 220 Seaside Place, TMK: 5-3-006: 004, Kaunakakai, Island of Molokai.
(SMX 2008/0442) (SM5 2010/0035)**

Ms. McPherson: Oh, and strike the SM5.

Mr. Chaikin: Okay, so strike the SM5. And the valuation of the action is \$7,500, N. McPherson.

Mr. Sprinzel: So proposed.

Mr. Chaikin: Okay, so we have a motion on the floor. Is there any second to this motion?

Ms. Buchanan: Second.

Mr. Chaikin: We have a second by Commissioner Buchanan. Is there any further discussion of this?

There being no further discussion, the motion was put to a vote.

It was moved by Mr. Sprinzel, seconded by Ms. Buchanan, then

VOTED: To amend Agenda Item G-1-a as stated by Chair Chaikin.

Mr. Chaikin: So we have a two-thirds approval of this. We've changed our agenda to reflect that this is now an assessment, and now we're waiting for your particular recommendation on this, Nancy.

Ms. Buchanan: I have one more question for Nancy. The proposed construction of the apron—

Ms. McPherson: Oh, yes.

Ms. Buchanan: Exactly what is that?

Ms. McPherson: Well, my understanding is that this is being required now. And what it is, is it's—

Ms. Buchanan: Who's requiring it?

Ms. McPherson: Probably Public Works. And it's to create a concrete connection going from the street onto the property. So they wouldn't have done it if they didn't have to. It's

dirt right now. And my understanding is that they had to do this in order to get final on their building permit.

Ms. Buchanan: Okay, so how deep is the excavation for this apron, and how large is this apron?

Ms. McPherson: I don't have that information, actually. It would be the width of the driveway now. And my understanding would be or my guess would be it would be maybe three inches of concrete?

Ms. Buchanan: So that information should be in here.

Ms. McPherson: Yes.

Ms. Buchanan: And it's not. So ask us to approve that without the specs on it is difficult because the whole issue with MECO and SMA digging is actual footage, you know, how deep we going go. So that would've been nice to see the specs on that.

Ms. McPherson: Yeah, I wasn't given that information so—

Mr. Chaikin: Okay, any other Commissioners have any questions or concerns? Let me just ask the public. Is there anybody that wanted to provide testimony on this particular agenda item? Seeing none. It gets back on our court. Commissioners, is there any Commissioner that would like to make a motion on this?

Ms. Buchanan: Does the applicant, Chair, sorry, does the applicant have that information about the apron?

Mr. Chaikin: We can ask.

Ms. McPherson: I could try to call her. She's on Maui. She wasn't able to come so—

Ms. Buchanan: Oh, that's Iris?

Ms. McPherson: Yeah.

Ms. Buchanan: Okay. Estefania, you don't know, ah?

Ms. McPherson: My understanding would be it would be very minimal following the natural grade.

Mr. Chaikin: I'm sorry. What are we talking about? Concrete around the pole or—?

Ms. McPherson: The driveway apron.

Mr. Chaikin: Oh, the driveway apron. Yeah.

Ms. Buchanan: Anybody from Public Works here know? No?

Ms. McPherson: I could see if Anthony's next door.

Ms. Buchanan: Does the Director know?

Ms. McPherson: Anthony's not here today. He usually comes to the meeting, but I could see if he's here. We could ask him.

Mr. Sprinzel: I should certainly reckon it would be one foot of excavation for a three-inch concrete. But there's nothing on it. I mean, it's not a foundation or anything. So I wouldn't think it would be more than that.

Mr. Chaikin: My guess is you don't dig very deep for a driveway.

Ms. McPherson: No, because the driveway is – you wouldn't want a big change a drop from the street level. So I walked it all the way from the street and it–

Mr. Chaikin: The driveway is more or less already there.

Ms. McPherson: Yes.

Mr. Chaikin: It's just a matter of putting concrete on it.

Ms. McPherson: And I will try to find out from Public Works why they are requiring this so that we can an answer on that.

Mr. Nathaniel Bacon: Add my two cents. Ordinarily, they're requiring the apron so that when you drive back and forth into your driveway, if you have a lower ground level, you're not crumbling the edge of the asphalt. That's why they do it. And so they make you integrate your apron to that so that there isn't that transition and you're not destroying that – taking the edge off of the asphalt. And, I mean, I can tell you ordinarily, this thing might be – you know, from the top of the asphalt down, it might be as much as six inches of concrete. Usually it's four inches. And he might put a little bit of gravel under that. And it's sort of – that's what they usually do, but it would be very minimal excavation as far as that goes. But since we don't have the drawing, we don't know what they're proposing.

Mr. Chaikin: Any other Commissioners? If not, I'll entertain a motion for whatever your pleasure is at this time. I mean, my manao is that putting in the power pole and just pave the driveway is a pretty minimal project. And I think that we should approve them and move forward with their project. I mean, that's just my manao. Commissioners, we can either agree with the exemption, we can defer this item for additional information, or we can deny it and make them go and get a special management minor permit. Those are basically, I think our options at this point. Does anybody wanna make a motion?

Mr. Sprinzel: May I suggest a motion to defer because we really don't have the facts. And it's the only thing that we need in order to vote.

Mr. Chaikin: Okay, Nancy did say that she might be able to call and get that information. We're wondering how far they're gonna dig down for the driveway. And that might even be able to be accomplished during the time of this same meeting, theoretically, where we wouldn't have to defer it to a different date, but that's up to the Commission, whatever you all would like to do. Okay, we had a – was that a motion you made to defer? Is there any second on that motion? Commissioner Bacon—a second. Is there any discussion on that motion?

Mr. Bacon: Yeah, we can defer it until the next meeting or we can defer it until maybe Nancy has some more information for us today. If she gets that information before we close out here, we could probably, you know, vote on that at that time. And that's what I would recommend doing.

Mr. Chaikin: Okay, we had a motion. Did you wanna make a friendly amendment to your motion?

Mr. Sprinzel: Yeah, I'd accept that. It's sensible.

Mr. Chaikin: Okay. And then you're seconding that. Okay. Is there any further discussion on deferring this through – until we get additional information whether that be during this meeting? And if we don't get the additional information forthcoming during the meeting or before the end of this meeting, then it will be deferred until the next meeting. That's what I'm hearing. Did you wanna say something, Commissioner Buchanan?

Ms. Buchanan: I don't think it would make a big difference because that would just be not hearsay from Public Works, but it's still not in black and white. And so at that point, it would still be hearsay. And it seems kinda minor in order to put that off for that, but I think it would go well as a lesson learned that we not going do this again, unless the specs are in black and white on paper. And then also, if Planner Nancy would also follow up with MECO, with Wayne Okazaki, and have him send to this Commission a copy of their protocols. And that copy of that protocols for their pole installation should include the person, the job title of the

person or persons that are specially trained to oversee pole installations. And that we'd like a copy of that. And just let them know that's the way it's gonna be until we change our rules and force them to do that. Okay? So that's all. I don't see any reason in putting it off because it's still going to be hearsay.

Mr. Chaikin: Okay, we do have a motion on the floor. The motion's been seconded. We're in the discussion phase. Basically, there is additional information that's being requested. Whether we can get that during this meeting, we don't know. You'd have to find out. Maybe get a fax of some kind of a plan of some sort. Maybe some information from MECO, if anybody's answering their phone over there. But anyway, there's a motion on the floor. So we've got to go ahead and either get additional comments or vote on that motion.

There being no further discussion, the motion was put to a vote.

It was moved by Mr. Sprinzel, seconded by Mr. Bacon, then

VOTED: To defer this item the Commission gets additional information whether that be during this meeting. And if the Commission doesn't get the additional information forthcoming during this meeting, or before the end of this meeting, then it'll be deferred until the next meeting.

***(Assenting: J. Sprinzel, N. Bacon, J. Kalipi, S. Chaikin)
(Dissenting: L. Buchanan, D. Kelly)***

Mr. Chaikin: Okay, the motion fails. So now we're back to looking for a new motion.

Ms. Buchanan: Chair, I move that we concur with the SMA exemption for the Acoba power pole installation and construction of a driveway apron for Estefania Acoba.

Mr. Chaikin: Okay, we have a motion on the floor to go ahead and accept the Director's recommendation to exempt this project. Is there any second on that? Okay, Commissioner Kelly has second it. Is there any further discussion on this?

Mr. Joe Kalipi: I would like to say this is the second pole application we have. And this is the second time I've heard that maybe this should be the last time we do this at the last time. And I don't know what's gonna happen to the next pole application. And maybe that's gonna be the last time we do that. So I'm just sticking with let's do it right. If we're gonna do it, do it right, do it complete, and so we can be confident, and you know, we gotta put a stop with let's that be the last time, the last time. So that's just my comments.

Mr. Chaikin: Commissioner Kalipi, what additional information would you be requesting in order to do this particular application correctly?

Mr. Kalipi: Oh, exactly what was the discussion was—to have the complete information about the grade, and it should come in together. And we gotta put a stop to it. They keep coming in after-the-fact and all that. My understanding is prior that MECO would bring in the application. Now, they're requiring the homeowners to bring it in. We talked about liabilities of who's gonna be responsible for the liabilities of it. I don't think we had a final answer of that being the landowner is gonna put in the application, MECO is gonna put in the pole. And so there's some things that still need to be dialogued and we haven't fixed it yet. And we're gonna continue to go ahead and allow these matters. To me, it's kinda putting the band-aid and it's okay. And my heart is for the applicants because they kinda caught in the middle of the mix of MECO changing their policy in the middle of who knows what. But – so somehow, we gotta – we gotta bring into agreement, or the process, we got to help the applicants get this right and with the parties involved, which would be MECO.

Mr. Chaikin: Yeah, I think you have some comments that are well taken like the chain of the responsibility when an applicant comes forward and puts forward in an application. Are they ultimately responsible? And then are we shifting that responsibility to HELCO, or some workers, or something? So that's something that we need to figure out, you know, as far as the, you know who's responsible, ultimately. Also, I think one of our problems that we have here is on the agenda, the Acobas have a consultant that's working on this project specifically to shepherd it through, and it's called "Expediting Services." And they weren't aware, I guess. Could you speak to why they're not here today?

Ms. McPherson: Well, this person is – works on Maui. And I have not seen an SMA assessment application from her previously. So I think she's just starting to do it for projects on Molokai. And honestly, what happened was that she went to Maui. She went to the Zoning and Enforcement Division. She tried to amend the SMA exemption, and she actually got pretty far with doing that before it stopped and it came to me. And that's why this does not have a new SMA assessment number. And it already has an SM5 number. And so I will talk to the consultant and I will discuss this with her. If you choose to concur today, I can give you my assurance that this will not happen again. What I'm doing is I'm advising all applicants and all consultants to contact MECO before you even put in for building permit, before you put in for SMA assessment, I wanna know what your power situation is going to be before I even get your application. I want you to have it all sorted out. And it's – the driveway apron thing is news to me. So I am gonna find out more about that as well. But applicants aren't finding out about this stuff until they're halfway through building permit also. So we need to coordinate with Public Works as well. And I'm always trying to do that every day, but I am trying to get items ready for you, at least two items for every Commission meeting. And I have to try to expedite these. I don't wanna do it incorrectly, however. So I'm learning a lot today as well. Thank you.

Mr. Chaikin: Commissioner Sprinzel?

Mr. Sprinzel: I have to agree with Commissioner – Commissioner Kalipi because MECO put in two electricity poles in my street at the Long House, and had to dig it out, and move it two houses further down. So the system is a little bit screwed up, and I would like to see it clear. And why not do it when they apply for the house? I mean, it's ridiculous to come around here. This is now the third time this has happened.

Mr. Chaikin: Well, you know–

Mr. Sprinzel: Which is why I want to defer it because that way we can at least get the correct paperwork and we aren't the ones doing it wrong.

Mr. Chaikin: Yeah, we really need to have a standardized process with these power poles because we can't be going through this every time there's a power pole. You know, we have to always reflect back to one agreement that HELCO has in writing or MECO, you know, that we can refer back to how they're gonna handle the situation so we're not trying to reinvent the wheel each time we get a power pole come through the process.

Ms. McPherson: Yeah, you shouldn't be getting a separate power pole assessment, period.

Mr. Chaikin: Okay, so we do have a motion on the floor. The motion has been seconded. I'll just ask one more time: is there any further discussion before we vote on this issue?

Ms. Buchanan: Just one last one: I don't want Estefania to have to suffer for this because it seems like it's an administrative type of problem between departments. And I think if we put MECO on notice, if they like their \$7,000 per pole, then they better, you know, hurry up and start to comply with what this Commission wants to see. I don't know if on Maui they have a programmatic type of VIS to follow all pole installations within the SMA. It would make sense that they had one. And if they don't have one, they should start be moving to have one so everything can be in place, and then we can do minor changes to our rules that say anybody excavating in the SMA need to have an archaeological monitor or meet the criteria that we set up. So right now, I really don't wanna make Estefania have to pay for this. This is her second time. She already gotta dish out \$7,500 for this now which should've been taken care the first time.

Mr. Chaikin: Okay, we have a motion. We have a second. Any further discussion? Seeing none. Okay, the motion is to concur with the Planning Director's recommendation that this particular proposed action is exempt. So that's been seconded. We've already had an opportunity to provide discussion.

There being no further discussion, the motion was put to a vote.

It was moved by Ms. Buchanan, seconded by Ms. Kelly, then

VOTED: to concur with the Planning Director's recommendation that this particular proposed action is exempt.

(Assenting: L. Buchanan, D. Kelly)

(Dissenting: J. Sprinzel, N. Bacon, J. Kalipi)

Mr. Chaikin: So I would vote for it but that's only three. So that means it fails. So that means we're back to making a new motion. Is there any Commissioner out there that wanna make a motion?

Mr. Bacon: I'd like to make a motion that we defer this until next meeting when we have what would relatively be spoken now as the hearsay evidence in terms of what Maui Electric, or HECO, or whoever is putting this thing in, what their rules and regulations are, which is what Laurie had asked for in terms of a letter from them stating what those – what that protocol is for them when they're digging. And then also, we should have a diagram of the apron so that we know how deep this thing is going and what the volume of it is. That's what we expect everybody to hand in each time. And so I think that's what we need to do.

Ms. Buchanan: Second.

Mr. Chaikin: Okay, we have a second on that. Corp. Counsel wants to say something.

Mr. Hopper: Yeah, it's just a caution. If you defer it until you get that information, that's something from MECO that you may or may not get. So based on that motion, you won't be able to have your next meeting until you get the information. If you don't have it within 30 days, this will be automatically exempted, if you don't take action. You know, just as a word of caution. I can't speak for MECO. Getting the applicant's information I imagine wouldn't be a problem because it would just show the specs for the apron. But to get MECO to send you something explaining those policies, well, I don't – I'm not saying that's something that they shouldn't give you, but if they choose not to based on the motion, it seems like you wouldn't be able to have this at the next meeting. So I don't know if you want to condition when you have your next meeting until you get that info because I don't know if they'll be able to give you that information. That's the only thought that I had.

Mr. Chaikin: Motion-maker, did you wanna address that and maybe put in the likelihood in your motion that we can have this on the next agenda with whatever information may be forthcoming?

Mr. Hopper: Maybe, sorry, maybe it's just that information. You'll definitely have this at the next meeting, but that's information that you're requesting as a condition, basically. Is that something—?

Mr. Bacon: Yeah, because we'd like that information which apparently, they've already spoken to Nancy about, right, in terms of what their policy is?

Ms. McPherson: There was no specific policy cited. It was more like a practice.

Mr. Hopper: I just don't want the Department not to schedule your meeting. So just definitely, we'll have this at the next meeting, and you'll be looking for that information for the next meeting.

Mr. Bacon: Okay, yeah.

Ms. McPherson: And depending on when the strike ends, the – you know, the supervisors may be maintaining the line, so that may slow things down. But I can also make sure that the consultant is here at the next meeting. And I can even ask Mr. Manera to be here as well. He was working – he was the project manager for the house, the previous one.

Mr. Chaikin: We do have a motion on the floor. It was seconded by Commissioner Buchanan. Any further discussion? Seeing none. All those in— Did you have something?

Mr. Kalipi: Just for discussion, and maybe just kinda addressing us. Maybe we can also invite a representative from MECO for the next meeting also. It'll be good to give them an earful of what's going on during the process.

Ms. McPherson: Yes, better than me. I will try.

There being no further discussion, the motion was put to a vote.

It was moved by Mr. Bacon, seconded by Ms. Buchanan, then unanimously

VOTED: To defer this item until the Commission's next meeting as discussed.

Mr. Chaikin: Okay, motion passes. This item is deferred until our next meeting where we can get additional information. Okay, thank you, Commissioners. As we move forward with our agenda, the next item is Kimberly Mikami Svetin of Molokai Drugs submitting a special management area assessment for interior alterations for the Liberty Dialysis Center. Nancy, you wanna give us additional information on that?

- b. **MS. KIMBERLY MIKAMI SVETIN of MOLOKAI DRUGS submitting a Special Management Area Assessment for the proposed interior-only alteration to the Liberty Dialysis Center at the Kamoi Center, 28 Kamoi Street Unit 4, TMK: 5-3-002: 112, Kaunakakai, Island of Molokai. (SMX 2011/0007) (Valuation: \$35,000) (N. McPherson)**

Ms. McPherson: Yes, thank you, Chair Chaikin. This one is another expediting measure called the "short form." You probably haven't seen this for a while, but we did develop, while I was Current Planner before, a short form for certain activities that you, the Planning Commission, decided we could put on a short form. And this one – this activity is determined to be repair and maintenance or interior alterations to existing structures that do not increase the intensity of use or expand square footage area of structure. This is for some interior alterations to the Liberty Dialysis Unit in the Kamoi Center. David Mikami is here and his daughter, Kimberly Svetin. And they are – the applicant is actually Liberty Dialysis. This is in order to better serve the Molokai community, they would like to make this alteration. It's interior only. It's not affecting the exterior at all. There's a location map. There's a site plan. It's – there's – I made a site visit and took photographs. We have done an assessment and determined that this qualifies as not development. So I would respectfully request that you concur with our recommendation for exemption from the Molokai Planning Commission SMA Rules.

Mr. Chaikin: Thank you, Nancy. Commissioners, any questions?

Ms. Buchanan: Nancy, is there any change use, change in use, that would increase the number of persons using the space that would tax the septic in Public Works' system any more than it is right now?

Ms. McPherson: No, it would not. If you would like to ask anybody else about that, but it is actually to accommodate a special patient that needs special accommodations.

Mr. Sprinzel: May I ask why it's necessary for this to have come in front of the Commission?

Ms. McPherson: Because according to your SMA Rules, as amended—I don't have a copy in front of me, but I'm sure Mike can give you the citation—we have to bring all proposed actions under Chapter 205A, which pretty much includes everything except trimming the trees and mowing the grass, unfortunately, to the Planning Commission for your review and concurrence. Now, we are looking at the SMA Rules again. And we are working with our Corp. Counsel, mighty Mike Hopper, who is going to help us get through this. And maybe we can look at some of these because it seems like if it qualifies for the short form, it

perhaps could qualify for administrative approval by the Staff Planner. And that would again, speed things up.

Mr. Sprinzel: Because if this is in front of us, I can think about 80 or 90 that have been done in recent months that should've come in front of us.

Ms. McPherson: Well, yes, I would agree with you there. And technically, interior alterations do trigger SMA assessment even if they don't require a building permit. What ends up happening, unfortunately, because of perhaps in part, because of lack of a zoning enforcement officer full-time on Molokai, these changes are happening because they don't – because SMA isn't triggered by a building permit because they don't need a building permit. So evidently, that's what's been happening is they – they're told by DSA that they don't need a building permit, end of story. And unfortunately, technically, they still need an SMA assessment. This one triggered a building permit, is my understanding. So that's why it's before you.

Mr. Chaikin: Yeah, Commissioner Sprinzel, I think the history of that was is that we are the final authority on exemptions, and we had given the Planning Department the authority to go ahead and approve these exemptions on their own. And then after a while, we found – we wondered why they're exempting certain projects that we didn't think it was supposed to be – should've been exempt. So the choice was either take none of the exemptions or all of the exemptions. So now this is an example of some of the exemptions that's coming to us that, you know, are kind of minor modifications, but that's the kind of the way the system is working. Okay, any other questions, Commissioners? Is anybody from the public wanna say anything? Or did you guys wanna make any comments or anything? Don't have to. Okay. With that, I'll entertain a motion on this.

Mr. Kalipi: So moved.

Mr. Sprinzel: Second.

Mr. Chaikin: Okay, there's a motion to concur with the Planning Department. It's been seconded by Commissioner Sprinzel. Any discussion?

There being no further discussion, the motion was put to a vote.

It was moved by Mr. Kalipi, seconded by Mr. Sprinzel, then unanimously

VOTED: To concur with the Planning Department.

Mr. Chaikin: Alright, thank you, Commissioners. And sorry the process is so laborious, but it's just the way that it is. So I appreciate your patience.

Ms. McPherson: Thank you, Commissioners.

Mr. Chaikin: Okay, with that, we can move ahead on our agenda. The next item that we have scheduled for is Unfinished Business from last week, and that's Nat and Anne Bacon coming for a special management area assessment for a two-lot subdivision, installation of a septic for an existing dwelling and enhancement of an existing water source. We had the site visit earlier today. And just for the record, Commissioner Bacon is recusing himself from any action that we may take on this item. So with that, let me turn this over to Nancy, and you can give us additional information.

(Mr. Bacon recused himself from this portion of the meeting.)

H. UNFINISHED BUSINESS

- 1. NAT and ANNE BACON submitting a Special Management Area Assessment for a 2-lot subdivision, installation of a septic system for existing dwelling and enhancement of an existing water source (Loiloa Spring) which includes installation of a 2.5 gallon per minute (GPM) solar powered water pump, a water storage tank, and water lines for property situated in the RU-0.5 Rural District at 8665 Kamehameha V Highway, TMK: 5-7-007: 028, Pukoo, Island of Molokai. (SMX 2010/0417) (Valuation: \$8,000) (N. McPherson) (Previously reviewed at the February 23, 2011-mtg.)**

Ms. McPherson: Thank you, Chair Chaikin. We have given you some additional exhibits. And at this point, these were the exhibits that were missing from the prior submittal: the inadvertent omission of exhibits. So at this point, actually, I think what I'd like to do is have the applicant come up and say a – oh, actually, before that, if – perhaps you can ask if anyone in the public would like to make any comments. We did have a site visit. We have done some additional analysis. We did hear some things today during the site visit that were helpful and informative. And I think it really helped to go down there and check out the site. But at this time, I'd like to defer to the public and the applicant, if I may.

Mr. Chaikin: Corp. Counsel?

Mr. Hopper: Just to clarify for the public, it's my understanding, and then we can get into discussion that – that this would be, based on the Department's analysis, and speaking with the applicant that this would be actually coming back to the Commission at a later date for

an SMA minor permit based on, you know, the applicant is okay with submitting an SMA minor permit application and having this heard under that. I think you should still take testimony under this item, but that's where this appears to be heading based on the discussion that I understood that Planning has had with the applicant and that I'm aware of. Again, the applicant and the Planner can certainly get into that, if that's something that, you know, is going to happen. But I just wanted to get that on the record before the testimony so that we understand that that's where I believe this is heading.

Ms. McPherson: Yes, that's correct. We – after discussion, and your comments at the last meeting, and discussion with the applicant, we are moving in the direction of Nat's agreed to request that this be processed as an SMA minor permit for – in its entirety.

Mr. Chaikin: Okay. So it sounds like we are gonna re-agenda this. What does it look like in terms of time table to get back to us? Is it something that you could do at the next meeting?

Ms. McPherson: Yes.

Mr. Chaikin: Okay.

Mr. Kalipi: I have a question for the Planner. What's triggering the minor permit?

Ms. McPherson: Well, we actually have a copy of the condition for the previous Akiona/Duvauchelle Subdivision, which occurred in – prior to the Bacons purchasing the property. And there was a Condition No. 4, and you'll get this as an exhibit, but it actually states that no subsequent subdivisions can be, you know, accepted under this exemption for subdivision for lots, four fewer lots. That's kind of a one time deal, evidently. So – and we've discussed it with Corp. Counsel. Because that condition – because that exemption was granted for the previous subdivision, any subsequent subdivisions aren't eligible for that after that. It needs an SMA minor permit. It's hard when all the records are on Maui and I'm on Molokai, but Lesli Otani with DSA was very helpful.

Mr. Chaikin: Alright, yeah, I do think that that is a correct course of action. And I think that whenever there is a Commissioner that comes before this Commission for a particular project that we probably even have a greater obligation to pay strict adherence to our rules and ordinance that we work under. So I appreciate both Nat and Nancy correcting the situation so we can move forward in a proper manner. But let me just ask the public if there's anybody out there, did you wanna provide comments on this? You can. You're welcome to come up and say something.

Mr. Myron Akutagawa: Aloha, everybody. For those that don't my name, my name is Myron Akutagawa. I work right across the street from Nat, and I live there, too, as a

caretaker, me and my wife, Collette Machado. I was there this morning, and I wanna go on record saying that as far as what I was concerned about was the aquatic life side of the ditch. See, the – as you know, the spring water goes under the culvert. At one time, that was the fish pond, but I guess when they developed that place, they had to make due with a ditch so the water can go out.

The aquatic wildlife is extensive. We have oopu inside there. We even have gold fish. I think tropical fish, I think people went throw – throw their aquarium inside there one time. And we have these lilies. I guess it's in up at Lake Wilson, same lilies, that we have to always go back and clear out, you know. But as far as wildlife, we have haupuu birds that go over there that feed on this wildlife. And my concern was whether his development going have anything, any major, you know, major things that can happen to the wildlife. So I pretty much feel okay about that.

The only thing is with the data, the data of the water. And I think it's easy to get. I know my wife, Collette Machado, she has the W.W. It used to be run by the State. Okay? So check the Kalamaula Spring, and the spring up at Pukoo, and other springs also, I believe. So it's probably on top of that. It's regular data so whatever water he's going to pull out of there, we can see if it's gonna have the impact on that.

The other thing they used to do was they used to measure from the culvert, from the property we stay in and another place to test salinity. Also, salinity up there. And it's pretty fresh. As it goes down, it's kinda brackish. And that was used I believe for very beneficial for the fingerling mullet, spawning mullet, inside of that ditch area now near on the makai section where another culvert is where the water outlet is.

My other concern was I just found out this morning about this. And I pretty much feel since we was impacted since the water flows into our property, we should've been notified because I'm pretty sure my wife would've been – would've scheduled to be here at this time because she has many more questions for this panel that I can't really be aware of.

And as far as the Planning Commission, you talk about building houses, all of those things. You gotta look at the Pukoo area. But in the time of 15 years, I believe eight houses came up, eight to ten houses, maybe more from the Mapuleo Bridge all the way to Kupepe, you know. I consider that Pukoo right around there. And how this – I mean, I seen places where, ho, they was going build one house, and all of a sudden, you know, in a small property, they build one house, and they make two houses, vacation rentals, you know. And not only on the makai side but on the mauka side also. On the mauka side right now, it's very near. I see this little house up there. That's on the gulch to your – on the east end side. I see this little house and I see this big pad, but look like there's a mansion going up. And there's only two on the side where behind the neighborhood store. She come down to the beach. About two years ago, there was major excavation going up around there.

I don't know what he was doing. I saw a surveyor. He put PVC pipes to block the surveying pins. So it's all visible from where I work at. And you can see 'em going all the way up to the top almost near the forest line. And you can see all the roads he was trying to excavate inside. I have no idea what he's gonna do: make subdivisions up there, you know.

Why I going through this as a concerned citizen, and I've been living up at east end all my life, is that the people, our people, I grew up with, who practically lived in every area seems like they've been – on east end, you have – most of them went move in the Kilohana Subdivision. Some up at . . . (inaudible) . . . Subdivision. What happening to our local people right now? They all being corralled all into this small different places.

So Planning Commission, I believe that right now, what I'm saying is it's a beautiful place still yet. We try very hard to protect our beaches, but the amount of people on the land on the makai side, but on the mountain side, it's kind of – I hope it's not just common practice, oh, I'm gonna buy this land, and later on, I going put about three or four maybe vacation rentals, maybe one other house. And this has nothing to do with what I telling you. I talking about the major concern about east end. And the area I was talking about is only from Mapuleo to Kupepe. I pretty sure if you go lower east end, it'll be more. And right now, the concern is where it's starting from right now. I can see around the Wavecrest area. We usually have to watch all that and go on all the way up from there. Because the Wavecrest area, you know, besides that resort across the street, across there's many homes being built, you know, between there and Kaluaaha up to the church. Many difference. If I would say 20 years ago, it's a different east end right now. Very different. So be aware that when we do something up at east end that I hope families, families can move in instead of people that will just say, oh, I wanted this place. Later on, I'm gonna divide, divide, sell, sell, sell, and we end up looking more like at one time maybe Kailua or whatever, you know, wherever they feel–Maui. So we really have to protect our east end area because that's why once you lose that, then the whole local aspect of what was will be lost forever.

So did I hear right that you was gonna defer this decision to another time?

Mr. Chaikin: Yeah. That's what's being proposed is that we take it off the table for today, and he's coming back for an SMA minor permit, which is different, considerably different from an exemption. A minor permit allows this Commission, if it so chooses, to put any conditions on that permit, or make any statements, whatever they wanna put on that permit as conditions whether when it's an exemption, we just exempt them from the whole process. So he is gonna come back for a permit. And we'll be–

Mr. Akutagawa: You gonna have testimony again?

Mr. Chaikin: Yeah. Yeah. Yeah, it'll be – because you talked about notice. You need to check the agenda for next time. It's on the website or it'll be posted in town. We're targeting the next meeting which is on, what, the 26th? Is that when it is?

Ms. McPherson: 23rd.

Mr. Chaikin: Oh, the 23rd is our next meeting. So that's when it's targeted but anything can happen between now and then, so make sure you check it and see if for sure it's gonna be on that agenda.

Mr. Akutagawa: With that said, I think that's all I covered.

Mr. Chaikin: Okay, and if you do have any additional information about that water data collection, if there is. If you could check with Collette, and if she has any water data specific spot that we can get additional information, can you make sure that Nancy gets that so we can get that additional information for our next meeting?

Mr. Akutagawa: Yeah, I'll get it. I thought they was under DLNR, but, you know, and then they disbanded that meeting about two years ago. But they said they had a web site, too.

Mr. Chaikin: Okay. Is there any other Commissioners have any other questions? Alright, thank you, Myron.

Mr. Akutagawa: Okay, thank you.

Mr. Chaikin: Is there anybody else that wants to provide testimony? Take your time. Take your time.

Ms. Judy Caparida: Aloha, everybody. I just wanted to just say something that I needed to share. I just finished building my house, and it's not a year yet. It's only about six months now, six, seven months. And you know, we really had to do a lot of stuff. You have to have permits for everything. So you know it's really hard if everybody's trying to do right, and then you not doing your job, but doing it right, too. I go inside that office. They really on me, too, you know. They real good. They say, "Auntie Judy, you need to get this. You cannot have this until you have this." So I look at them. I know what the Planning Commission is all about. So when you see somebody's doing their job, you appreciate that because a lot of them going through anxiety. This is giving them stress just to get their house done. You know, you making plans and all that. And you screwing up everything by not doing your job, by telling them firsthand, "Hey, you bring the paper. Bring everything." I mean, you gotta be straight with them. We come over here. It's boring to hear all this darn rubbish you supposed to be taking care of already. Ain't that right? All

this stuff when it comes to you, you supposed to be set up already so that no more problems. So I just need to share that. Don't let anybody talk you into doing something if you know that they not doing right. Then you gotta help'em. You gotta tell'em, "You know what? You gotta do it this way, or not--," say, "My butt is on the line." You know that's why you gotta tell'em. Sometimes they no understand good talk. You gotta say something. But the thing is that you're helping that person stop getting anxiety and stress 'cause I know. I really tell you, I really appreciate what I went through. That's why I can come to the meeting and I say what I had to go through. Even him, what they did before you gotta unravel. And it's not easy. But in the meantime, it's because there's no trust. Nobody trust nothing nowadays. I no trust nobody. I only trust me. But that's why I know how it feels. The thing is that when you try to do pono, do pono all the way. Walk'em through if you have to. In the meantime, pound'em so if they like finish'em hurry up, then they gotta do it. So I needed to share that with you guys because it's really miserable. Thank you.

Mr. Chaikin: Thank you, Auntie Ruth. Anybody else? Go ahead.

Mr. Bacon: Okay, Nat Bacon. And, Myron, I'll give you a call to remind you about the next meeting, anyway. And the other thing that you brought up, which I've been pushing for a long time, too, is this whole thing about vacation rentals, and our disappearing sense of community that we have out there. And that's an issue that has to be taken up some other way, I guess, because it's not very effective here.

Anyway, so after talking to Nancy and finding out this condition that was put on the Akiona/Duvauchelle Subdivision sometime ago, what I need to do is come back and resubmit this as an SMA minor next meeting, permit application for next meeting. And so I guess I'm withdrawing my exemption request at this point, and going in – and I'll redo this whole thing again as an SMA minor application, if that's okay with everybody. Is that the way to do this?

Mr. Chaikin: Yeah. Thank you, thank you, Nat. Alright, so we're gonna actually drop this agenda item, and we'll look for it on a future agenda. And with that, Nat, just to lead into our next agenda item, we're gonna be – we're gonna be hearing a report from the committee on the rule changes. And we are gonna be looking at enforcement, notice of violations, and all that kinda stuff in our rules, so we can take a look at that. So with that, we're gonna move into the next agenda item.

I. REPORT FROM THE COMMISSION'S SUBCOMMITTEE ON RULE CHANGES

Mr. Chaikin: And sometime ago, we decided that the rules that we have are really outdated. And just a quick read-through, you can tell that sections haven't been updated for quite a while that probably should've been. So we selected a Committee. It's Commissioner Sprinzel, myself, and also Napua was on that, and Commissioner Williams. But since they

dropped off the Commission, it was me and Commissioner Sprinzel. We went through the rules and, you know, the whole idea is not a rewrite of the rules. It's just that – take a look at them and find specific areas that could either be clarified, or we could add something, or take something out, or fix the typos, or make it more consistent with the other parts of our rules, not necessarily redundant. So we went through there, and we did the best we could, I guess. Me and Commissioner Sprinzel, we're not experts on these rules. We just read them and used our experience sitting through a bunch of these meetings. Areas that had presented themselves as concerns in the past, we took a look at that, and see if we could fix the wording to make it just a little bit better.

So basically what happened was we came with some changes. And we worked with Corporation Counsel. He instituted those changes, which is the paper that you guys have got. And since then, we sat down and reviewed them, and we made some additional changes.

So the way this works is this is just one step of a multi step process. Today is just a presentation to the Commission of what the Committee has determined would be a better set of rules for us. Additionally, we have to get input from the Planning Department, which includes Coastal Zone Management, the Director, our current Planner, and anyone else in the Planning Department that thinks that we should amend or change our rules one way or the other. We also have to get additional input from the public. You, Commissioners, have to take a look and perhaps make additional changes to these rules. And then we need to finally come up with a set of rules that we think are good, and then let Corporation Counsel take them and just check for form and legality to make sure that they're okay. And after that, we can send them up to the Mayor for approval. So this is just one of the steps of a series of steps. And Corp. Counsel, go ahead.

Mr. Hopper: Just to clarify at this meeting, you formed a subgroup, which is an exception to the Sunshine Law, which allows more than two Members get together and discuss Board business. And that's what they did. They're reporting back to you. Because that's a Sunshine Law exception, at this meeting, I'll read you the Sunshine Law on this type of situation. Basically it says after the group meets, which was in this case, Mr. Sprinzel and Mr. Chaikin, it says, "All resulting findings and recommendations are presented to the Board at a meeting of the Board." So that's now. And then a separate section says, "Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the Board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the Board. "

So basically, it's saying today, you're basically getting a report back from what the group investigated. You cannot have any deliberation or decision-making at this meeting. For rules anyway, you have to public notice them 30 days in advance. And so you couldn't make any decisions to adopt rule changes until that anyway. But at this meeting, you

know, you could certainly ask questions to the group, but you would have to really have another meeting in order to make any decision-making such as to place this up for public hearing notice or to do anything else, but certainly, to get – to have, you know, questions asked about the recommended changes you have in your packet. You could do that. You wouldn't be able to do anything that would be considered deliberation under the rule. And again, I'm just reading right from the Sunshine Law.

And the plan would be to get this – you know, some of this information from the – you know, presented to the Commission. Have the Commission maybe have its own comments. Simultaneously, have the Planning Department have their comments. And then after our office reviews the final product, you would need to have it posted in the newspaper. Rule changes, 30 days in advance of a meeting. You have a meeting. You'd vote on the rules to adopt the rules at the meeting. And then the Mayor would have to sign the rules at the end, and then they're new rules. So that's the process. I just wanted to clarify on what you're doing today. No action would be taken. This is just a report back from the group as far as what they found, and explaining kind of the changes, and you questioning on what they kinda came up with.

Mr. Sprinzel: I would just like to add that Mike, the lawyer, and Steve, the Chairman, worked together very hard on this. I mean, they put a lot of effort into it. So all I did was read it through and nod my head.

Mr. Chaikin: Okay, with that, I'd like to take a look at the rules. There's four different sets of rules. I don't really wanna take them in the order that they're agended. I'd like to start with the first set of rules, which is the Special Uses in State Agricultural and Rural Districts. And what I would like to do is just go through the whole set of changes for this particular set of rules. And then when I'm done, then you can ask questions to clarify, or if you don't understand a particular part, we can get further clarification.

3. Rules Regarding Special Uses in the State Agricultural and Rural Districts

So just starting with the Special Uses in State Agricultural and Rural Districts. And before we start, let me say that on this particular set of rules, it was done differently than the other set of rules. This is a complete set of rules where a few things were changed within the rules. But you can't really tell what was changed unlike the other sets where it's underlined. And so for whatever reason, Corp. Counsel did it this way I think because there were so few changes incorporated in these set of rules. But anyway, just to get the ball–

Mr. Hopper: I think, actually, Steve, just as a clerical thing, the reason that was done because the old section was so old. It was not in electronic form. It was only on paper. So I think an electronic form was typed up and I think the rule numbers had to be changed

to be indexed with the existing rules. That's why this was redone. These were in 1989. And just fyi, you are the only Commission that has rules for special – for a State special use permit. I think all Commissions probably should move that way, but you're the only Commission that had it, and it was adopted in 1989.

Mr. Chaikin: Okay, and as I go through this, I'd like to invite Corp. Counsel or even Vice-Chair at any time to jump in, and just make any addition or clarification of some sort. Does anybody wanna say anything before we get going on this?

Ms. Buchanan: So we stay on the draft thing called, "Summary?"

Mr. Chaikin: Yeah, well, it's basically the one that's titled, "Special Uses in State Ag and Rural Districts." Oh, does it say–? Oh, yeah, "Summary," sorry, yeah. Okay, you all there? Okay, if you look on page 3, there's a list of definitions. You can't see that it was deleted, but what used to be there is the "central coordinating agency," and it was defined, and we dropped that out because it's no longer relevant.

Moving on to the next page, page 4, if you look under no. 1, it says "A non-refundable filing fee and processing fee of \$250." We are going to link that to the Maui County budget. So in the event that that fee gets changed, our rules aren't up to date. You're not gonna list application amounts within our rules.
The next– Yeah, go ahead.

Mr. Hopper: Just as a note, on most of these, the changes we discussed earlier are on the paper. So you'll see what the proposed change is. In this case, this is something that Steve and I just discussed yesterday. So this is going to be made in the next set that we give you. So "\$250" is going to change to "as set forth in the County budget." But with most of these rules, the changes are already reflected in the documents that you have.

Mr. Chaikin: Yeah, there's some things that aren't reflected. And those – like for instance, the next one, no. 5 on that same list, it talks about a shoreline survey if the parcel abuts the shoreline, and is determined to be necessary by the Planning Director. Within our rules, the shoreline rules, and some of our other rules, we thoroughly describe when a shoreline survey is necessary. So we thought it was redundant or even it wasn't necessary to have it in here because if you have a parcel that's on the water, you're gonna have to deal with the special management area rules and everything. So we just wanted to drop that off and not even talk about the shoreline survey within this set of rules.

At the bottom of the page it says, "A description" on that last line. It used to say "A brief description," and we just wanted to have "A description." It's kind of minor.

Next page, page 5, again, in that kind of second or that first paragraph right there, somewhere in the middle of that paragraph it says “the department of planning.” It used to say “the central coordinating agency.” They haven’t been doing that for quite some time, so we’re dropping it off and correcting it with “the department of planning.”

If we go to the next page, page 6, let’s see, okay, on Item b, we have 1 and 2, and then you have “b,” and it says, “The desired use would not have an unreasonable adverse affect.” It didn’t use to say that. It just said – it used to say, “A desired use would not have an adverse affect.” In almost every project that you do, it’s gonna have some adverse affect. So we put the word “unreasonable” in there because theoretically, if anything had any adverse affect whatsoever, we wouldn’t be able to grant them a special use permit.

Okay, on the next page–

Ms. Buchanan: So, Chair, you’re defining “reasonable” somewhere in ...(inaudible)...

Mr. Chaikin: No, that’s subjective, I guess, what “reasonable” is.

Mr. Hopper: Again, this would be a permit issued by the Commission. If someone wanted to do a special use in the State ag or rural district, you, as a Commission, would be looking at things like does this create an unreasonable use, finding conditions that you think would mitigate an unreasonable use, or unreasonable impact. And if you thought there was an unreasonable impact, you could deny the permit. So you, as the Commission, would look at each case and see is there something that’s gonna have this – what kind of an impact is it gonna have so–

Ms. Buchanan: But then would be subjective of us to define unreasonable amongst ourselves, then?

Mr. Hopper: But it would be based on the facts of each case. If you thought, okay, this is gonna– I think Steve didn’t want you restricted from approving a permit that had any kind of adverse affect at all. Like if it has like a slight adverse affect, you wouldn’t want someone coming back later and saying, oh, this had a bit of an adverse affect, so your permit’s invalid. I think that was the idea.

Mr. Chaikin: Okay, if we move on to page 7, kind of the bottom middle of the page is Item No. 2. It talks about time extensions. In case somebody gets a use permit at some point, the use permit might be expiring or something, at some point, they gotta put in a request for a time extension. We increased that. It used to be “forty-five days.” Now, we’re making it “sixty days prior to the expiration.” It’s in Item 2. It says “at least sixty days,” now. It used to say “forty-five days.” And in addition to that, we’re gonna require – and it doesn’t

say this here, in addition to that, we're gonna require when they come forward with their application for a time extension, it also includes a compliance report.

Okay, on the next page, page 9, if we look at no. 7, if you start reading no. 7, it talks about the conditions of a special use permit shall be self-enforcing, self-enforcing. That means that if you have a permit, you do something wrong, you no longer have the permit because it's self-enforcing. It's a little bit of an odd approach. And what we've done is we've – I think Michael spent a lot of time redoing sections in our rules dealing with notice of violations, enforcement, and breaches of conditions, and things like that. So what we wanted to do is take no. 7, and just remove it in its entirety because it's dealt with in other areas of our rules that if somebody breaches a condition of a permit, what happens. So it's kind of–

Ms. Buchanan: So you're striking Item 7?

Mr. Chaikin: Yeah, 7. And it's dealt with other locations within our sets of rules.

Mr. Hopper: Yeah, essentially, there's an Order to Show Cause Section that proposes that any permit that you issue, somebody or you, as a Commission, can set up basically, a petition that would say, okay, we wanna see if these conditions have been violated, have a hearing on whether or not the conditions have been violated, and then determine at the end of that, an appropriate remedy, which could include either amending or basically, eliminating the permits with – you know, taking away the permit if the person violates a condition. As it says now, it says that that automatically happens. And for that to happen without any kind of a hearing for a person who has the permit could be difficult to do legally. Basically, if they're – the situation would be if there was a suspected breach of a condition, somebody could bring that forward to the Commission. The Commission could hold a hearing, determine whether or not a breach has occurred, and then if they find a breach has occurred, decide on a remedy which could include eliminating the permit. And the State Land Use Commission has that, and the language is modeled after that. So basically, you know, that, I think is something that you could take that section out because this special use permit, for example, would be enforced through that method. Or, you know, if, you, as the Commission, wanna come up with a different method, you're obviously free to look at different options, but that was the idea behind this.

Mr. Chaikin: Okay, the next – just right after that, we have no. 8. And it talks about a project conforming to the requirements of other Federal, State, County statues, ordinances, rules, regulations, or codes. We also wanted to add at the end of that, “and the general and community plan.”

Next page, page 9, at the bottom of the page, it talks about appeal. And it says, “A decision.” And we changed that. It used to say, “A denial of the permit.” And we've even had situations here where even an approval has been appealed. So instead of saying

“deny,” or “approval,” we just said “A decision of the authority regarding the permit.” It’s just a slight change there.

Okay, yeah, if we look at that same page on 9, there’s Item a. And it’s kind of relevant to Myron. He was standing up here and he was wondering, why weren’t they noticed? But anyway, this is another – just something to do with notice. And it says, “The department of planning shall notify the Land Use Commission and such persons and agencies who have requested to be noticed.” And then it goes on to say, “And/or may have an interest in the subject matter of the time and place of the hearing.” Well, we don’t really know who may have an interest. So it’s hard for us to notify everybody who we might think may have an interest. So we’re gonna scratch that. And we’re just gonna say, “Such persons and agencies who have requested notice,” period, and get rid of that last bit.

And that concludes the changes for that particular set of rules. And again, this is just proposed changes from the Committee. You guys may have other ideas of how we can improve these rules, but that’s that.

4. Shoreline Area Rules

So the next one that I’d like to go over is the shoreline area. We have Rules Relating to the Shoreline Area. Can you all find that particular set of rules? Okay, if you’re all ready, you know, this set of rules is a little easier to follow because he put in brackets things that are going to be eliminated, and he put in – underscore the things that are being added. So you can kinda follow along. There’s just kind of a typo on the first page. It’s being corrected.

Here’s kind of a substantive change on page 2. On page 2, it starts talking about the setback area. You have a shoreline setback area, and basically, you can’t build in the shoreline setback area. Oh, but you can. There’s a list of things that are actually okay to be built in the shoreline setback area. And one of those things is a swimming pool. So we’re scratching the words, “swimming pool.” Swimming pools are considered minor – what are they considered? Minor – something or other – minor structures. And so they can be built in the shoreline setback area. So we’re just gonna strike that.

Okay, on the next page, page 3, up at the top, there’s just a little bit of a – kind of a typo correction.

Okay, if we go down to Item 2 towards the bottom, what it’s talking about is when somebody goes for a variance, they need to get a public hearing. So you have to get a public hearing if you’re gonna get a variance to do something that’s not otherwise permitted in that shoreline setback area. Oh, but there’s exceptions. There’s certain times when you actually don’t need that public hearing. And it goes on to list certain items. And then no.

2, it says, "Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion." So if you've got this major structure, it's in harm's way, and you need to move real quickly, you can not have the public hearing, and you can, I guess, act on a variance. But what we wanted to do is strike the part that says "costing more than \$20,000." Just if there is any legal structure that's in harm's way that us, the authority, can waive the requirement for a public hearing on that just so we can move real swiftly.

Okay, further down at the bottom of that page, we have always had an issue with noticing the public on this island. We've always had it in our rules that they have notice the action on Maui because of the way the rules were written. So this occurs multiple times throughout our rules, so we're changing to say that "public notice of the application shall be—" "A publication—" or wait, "Publication of the notice application in a newspaper which is printed and issued at least once weekly on the Island of Molokai, and if no such newspaper exists at the time of notification, then notice shall be published in a newspaper which is printed and issued at least twice weekly in the County of Maui." Okay, so this is something that will be replicated numerous times throughout our rules. Just below that we've made some minor changes there.

At the bottom of that page, we get into enforcement. And I have to say that Michael spent a lot of time on the enforcement section and notices of violations trying to get our rules up to speed, because previously, we had very little verbiage when it came to enforcement and NOVs. And so he made it a lot more explicit on exactly what the process is, and how you proceed, and what the appeal and the rights are for various individuals. And I'm gonna let Michael explain this.

Mr. Hopper: This – the reason this is necessary in your shoreline rules is the original rules just said, "Any person who violates any provision of these rules shall be subject to the penalties provided for in Chapter 205A-32, HRS." It doesn't go over any type of citation process like you have in your SMA rules. It doesn't go over any kind of a fine amount process, or how you determine the amount of fines. You know, it basically just says you do whatever the State law lets you do. So a lot of this stuff was added in yours what is in your SMA rules now. Some of it was what was in the SMA rules that we've – what we did we looked at both enforcement sections in your SMA rules as well as in your shoreline rules, and came up with a Process A, for citing the violator; B, for determining how much— And by the way, the Planning Department is the one who would cite somebody for a violation of SMA rules or shoreline setback rules. It comes up with the criteria for, you know, issuing the violation, how you give somebody a violation, how much money you fine them for, how much the initial and the daily fines can be for, and how someone goes about challenging a violation if they get that issued on them. And so that challenge gets appealed to the Commission, but it's heard in an expedited process. Before, the appeal was heard through a full contested case hearing, which was a bit – it could get a bit ridiculous on Maui.

They would have discovery. They would have depositions. The cases would go on for over a year. And in order to do any type of enforcement, there does have to be, in my view anyway, some type of efficiency manner where the Commission can hear the case, hear the facts, and then dispose of the case. Make the your decision if the violation is confirmed or denied within a reasonable period of time because if every violation is issued, it takes two years to be resolved. It's very difficult for the Department to use its resources on different violations. Again, you, as the authority, over SMA and shoreline setback areas are the authority in those areas. So you get to dictate to the Planning Department how you want them to be doing enforcement. What these rules do is it comes up with the fine amount. It gives criteria for the Department to determine the fine amount. And I think that's important because the Department has the discretion for an initial shoreline setback or SMA violation to fine up to \$100,000 for the initial, and fine up to \$10,000 per day that the violation continues, which is substantial fines. And so this goes over a criteria that you want the Director to look at in determining am I going to do a ten thousand-dollar initial, fifty-thousand-initial, a hundred-thousand-dollar-initial, and be able to back that up so that if an appeal comes to you, you get to hear from the Director, here's why we thought this amount, here's the evidence we have for the violation, and things like that.

So I don't wanna go over every single aspect of the enforcement. I can certainly answer questions. This is very similar to what's on the SMA rules now. And it's kind of trying to get to a type of uniformed enforcement scheme for SMA and shoreline violations, as well as appeals from those violations, and how you will be determining a decision on whether or not the violation would be sustained or overturned. So that's what that's about, basically.

Mr. Chaikin: Go ahead.

Mr. Bacon: Okay, this is probably – I've said this before, but is this where the fines go to the General Fund? Or is this something – is this an opportunity for us to say, okay, those fines should go to the Department, and therefore, the Department can actually afford more enforcement officers?

Mr. Hopper: I think they're – that's something in the rules you can't really determine where the fine goes to. That's the County budget issue. It would normally go to the General Fund. I think Will could maybe talk more about that. I think it would be possible to look into – I think there'd need to be some type of amendment to allow the – and how it would work with the Department of Finance, I'm not sure. You'd be collecting revenue and distributing it to one Department specifically. I'm not saying it's, you know, a bad idea, but I know at this stage, I think the fines all go to the General Fund. And to change that, there's been discussions on how that would have to be done. I don't know if it's been done in other cases, but it's the same for all enforcement. Same with Public Works' enforcement, as I understand it. Planning can maybe go into more detail about that. But, yeah, as of now, these fines, if collected, would go to the General Fund.

Now, of course, the County can reallocate them in the form of, okay, we've taken in this much money for the General Fund. We're gonna hire a new Zoning Inspector, for example. But at this point, it wouldn't be restricted as far as its use. And I think you would need Council action to basically, have that. I don't think that's something you can dictate where that money goes, but that's my understanding.

Mr. Chaikin: Okay, thank you. You know, when I read all this stuff, there were a couple of different areas that jumped out at me as either needed further revision or clarification. So I talked to Michael about them. One of them is when you give somebody a notice of violation, how do you do that? Because now, it's attached with pretty substantial fines or it can be. It doesn't have to be. The fines can be very minimal. But in our new rules, we're changing that quite a bit. It used to be \$1,000 a day and \$10,000. What we saw is that when somebody's building an eight million-dollar house, it's really a slap on the wrist when they're doing major stuff without approvals out there.

So – but the real issue is how do we notice those people? Well, we can do it – here we have by certified, or registered mail, or a personal delivery. But what Michael was telling me is that on Maui, people, when they get something from the County, a certified or registered, they don't even pick it up. So there has to be additional ways in which you can serve these people. Can you speak to that?

Mr. Hopper: Sure. And then first of all, the fine amounts for shoreline rules didn't increase. The State law allotted for ten thousand-daily, a hundred-thousand-initial. The SMA fines did increase. The old fines in the State law said a thousand-dollar per day, ten-thousand-initial were the maximums. That changed in 2001. And your rules are being amended to conform to that State law maximum again. Again, since the shoreline rules just referenced the State law, this is really no change. You're just specifying the amounts in your rules rather than referencing the other section.

But, yeah, as far as serving the violation, two things are required generally for due process before you can issue someone a fine: one is notice, and two is a hearing. And so this is the first part–notice. You have to find a way to get a notice to somebody that they're violating. As I said sometimes on Maui, if somebody gets something by certified mail from the County, people don't touch it because they know it's a violation. And so it gets tough to get that – you know, they'll say, oh, I never got this. You can't fine me. I never got this. So there's another – another option is personal delivery, which is a process server, basically. You find an Inspector to track down the person and personally deliver that, that service.

In the event that that's not possible, and certified mail's not possible, you can do service by two ways: one is posting on the property where the violation is occurring or the last known address. I didn't actually put that in this one, and so we do need to make that

change into the shoreline rules, but that should be placed there. Posting is basically, you go up to their property; post on the front of the property, the notice; and take a picture showing the date of it, and then that's considered service. In addition, you can notify in the newspaper by the publishing the newspaper certain information of the violation, and that's published for a couple of weeks in the newspaper.

Now, those are all alternative service methods, and those would end up being allowed only in the event that you can't serve by certified mail or personal delivery, because those are really the preferred method. This is similar to what's done in court. In court, if you tried to serve a complaint and you can't do it, usually they will let you do it by these alternative methods.

Mr. Kalipi: This is just a quick input. What about the notification for an employee on property? Because in most cases, there's some kind of activity occurring on the property. And, you know, what about some kind of language saying notification to an employee of the violation, you know, something like that? I don't know. But in most cases, there's work being done illegally on a property and there's people on the property.

Mr. Hopper: You have a good point. There's two things: one, an owner of a property regardless of who's actually committing the violation is liable for that violation, if you own the property. And two, the contractor is as well. So you could serve the contractor. And I think the point you brought up is maybe talking about service of an entity. If it's a company, if you serve on that employee, that's considered service on the company? I think that that's true. And that we should have – maybe incorporate language to do that.

As far as serving someone, unless someone's their authorized agent, if it's an individual, you generally couldn't say, here, I'll give it to your mom or something. You know, let's hope that this person gets it. Usually that could be inadequate because if the person said, oh, my mom never gave it to me or I didn't get it– And believe me, this stuff happens. And there's court cases a mile long on this stuff. And it's amazing the lengths people will go to, to avoid, you know, that issue, but it's a serious issue. So usually you would want to do certified mail, restricted delivery. And what you would want in the file before you get on the appeal would be the notice of violation, a signed receipt showing that the person that you're going after on that violation is the person who received it.

Another alternative is if you serve it personally in an affidavit basically by the person who served it saying, I hand-delivered this to the person on such and such a date, at such and such a time, that person can be available to testify before you, and say, yeah, I served this on the person. But as far as serving on like – you know, if it's a construction company and serving on the employee, I think that would be adequate for service on the contractor, but I think it's a good point you make that in the rules, we should probably specify that service

on an authorized – on an agent or an employee of a company constitutes service on that company. I think that's a good idea, so I'll note that.

Mr. Chaikin: Alright. This is something we're gonna ask Michael to kinda beef that whole section on how we notice these people so it's more inclusive.

Okay, at the bottom of the page, it talks a little bit about when somebody gets a notice of violation, they have 30 days to appeal. So they get a notice of violation. It says, hey, Mr. Violator, we're gonna fine you \$10,000 a day from the date that this notice of violation becomes final. Okay? And what triggers that, the start of the 30 days, is just the mailing. And I'm in – I'm just putting myself on the other shoe. I'm in Europe for three months. And I come back and I have this huge fine. And it got – it got finalized because it was tied to the date of the mailing. But since these fines are so big, we have to have a more onerous way of starting that period rather than just the Planning Department sticking something in the mail. I think they really have to go – you know, use a diligent effort to make sure that that person is notified of that violation. So we need to fix that on the bottom under 3. Do you have that notated?

Mr. Hopper: Yes, it would go from the date of receipt, or publication in the newspaper, or posting, if those are applicable. So if you have the certified mail receipt, it would be the day they actually sign for it. If you have the affidavit, it's the day the person says that they gave them the service. If you do the newspaper, it's when it was published. And then if you do the – if you do a posting on the property, it's the date you post it on the property.

Mr. Chaikin: Okay. Just moving along on the next page, we're on page 6. In the middle of the page under 5, just kind of a minor change to that. It talks about the inspection of the parcel by the enforcement agency and the Department. Well, the Department is the enforcement body. So we're gonna get rid of the "enforcement agency," and just say, "and the Department."

Okay, on page 7, everything is pretty well straightforward. All that stuff at the top has brackets around it, so it's all out. Well, not all of it, most of it, or all of it, I should say, until you get to "Appeal of director's decision." And that's just some reworked verbiage as a result of the appeal that we had. I think it was just some strengthened language.

Mr. Hopper: We carved out the NOV appeal process. An appeal from a notice of violations would go to a different process under the rules than an appeal that is of a different nature. That's a more expedited appeal process for a notice of violation. That's similar with the Board of Variances and Appeals on Maui has done. The Board of Variances and Appeals which could hear an appeal, for example, from, you know, a relatively complex situation versus an appeal from a notice of violation. The BVA has decided that it's gonna have a separate set of rules for appeals for notices of violations because those cases are typically

– deal with facts: did the person do this or not, proving a set of facts. And so that's why there's sort of an expedited set of rules for proposed. You know, if you like them, that's great. If not, that's fine too, for notice of violations that you would issue. In my time here, I've never dealt with an appeal from a notice of violation issued, but it's good to be prepared. Maui is considering rules like this as well. They didn't adopt them yet. They may come back before the Commission. The Lanai Planning Commission, by the way, has adopted those expedited NOV rules and similar SMA amendments to the ones here. Not in the shoreline rules yet, but in the SMA rules, they have adopted those changes.

Mr. Chaikin: Alright. Thank you, Michael. That concludes all the changes for the shoreline area's set of rules. So the next one I'd like to take a look at is the Rules of Practice and Procedure for the Molokai Planning Commission.

Mr. Kalipi: Really quick, Mr. Chairman.

Mr. Chaikin: Yeah, go ahead.

Mr. Kalipi: You know on the appeal one, and I don't know if this is the time to dialogue it, but I know there was an issue. As I said, it might be some other section, but if someone appeals, and I know there was some language saying that he needs – or that person needs to have standing in the appeal. Is this associated with that? I know that we had a discussion about Steve Morgan not having standing in an appeal case about a year ago. So – but is that affiliated or are we gonna run into that a little later?

Mr. Hopper: Well, this could be a section to address it. Standing is a couple different things. One of it is it a Director decision or not. And normally this deals with Director decision appeals. And frankly, it was tough for me to come up with a lot of Director decisions under these rules because almost all of the shoreline rules come back to you as a Commission. So most of the decisions I believe would be Commission decisions under here.

The second issue of standing of whether or not someone can appeal, in my experience, on Maui, anyway, where you have most of the appeals, the vast majority of the times, the person appealing is the applicant who got some kind of a denial of a permit, or might have a condition they don't like. That type of an appeal, someone clearly has the ability to appeal because they're the applicant and they got a denial or something like that.

Standing is something that whether or not you put it in these rules, exists under State law. You know, the court's gonna say when somebody has standing to appeal and when somebody doesn't. If you want to kind of be more specific as far as who can appeal Director decisions to you – you know, again, it's tough for me to think of that because normally an exemption on Maui is something that the Director issues, and that gets

appealed to you, SMA minor permit decisions, or be made by the Director. That would get appealed to the Commission. Here, I can't think of a whole lot of decisions the Director makes that are final decisions that would be appealable to you. But if you wanted me to look at what standing requirements are typically under the law, and write them out here, or say standing must be established pursuant to applicable laws or something general like that, I could certainly put those in these rules as well. Or we could can up with some of the elements of standing.

The closest thing you have in your rules about standing are for petitions to intervene, for example under contested case rules, under this next section you're gonna review. But petitions to intervene, there's a list of requirements for what someone has to meet in order to be entitled to intervene. If you want to look at doing something similar to that for appeals, then we could do that as well.

So that's the best I can tell you at this stage. We could list the standing requirements that you would want to establish, as a Commission, that do exists under the law. Or we could leave it as it is in which case, basically, people would have to use case law to establish to you, as the Commission, that they have standing to appeal a Director decision to you. And then you could use their arguments to determine – I mean, you're free to look at a lot of different things to determine that, you know, and it's a fact-based analysis. But we could certainly put in a sentence something like, "Standing must be established," or "Standing pursuant to Hawaii State Law must be complied with in filing an appeal," or "The appellant must set forth its basis for standing in the appeal," something like that.

Mr. Kalipi: Okay. Thank you. I can wait until we come to that section to – then we can go at it, because I think you said we're gonna come up to that also.

Mr. Hopper: But this is one – I mean, this is a section – there's a section almost mirroring this in your SMA rules. This is the shoreline rules. There's a section that looks like this, I believe, in your SMA rules which looks like you're gonna get to last. We could address it at that time, but you have the same issues with appeals under the shoreline rules as you would for appeals under the SMA rules. And we might wanna look at making the SMA rule appeals similar to what the appeal rule reads in the shoreline rules. Again, these are all preliminary drafts. And the reason it's being brought to you is for suggestions like this. So we could certainly go over that when we come to it. Maybe address it with both, once we get to see both of them so–

Mr. Chaikin: Okay. And just interestingly enough, in some places, when I was reading through it, it says that the applicant may appeal. It doesn't even say anything about somebody else appealing. It specifically talks about the applicant appealing. So we can look at that further on. Did you wanna say something?

Mr. Sprinzel: We did have no end of argument over the Director's decision when it was our decision. In fact, the appeal was against an approval for an exemption. It wasn't against something that had been denied. And the guy who appealed actually had no standing in the case whatsoever. I mean, he just happened to live along the same shoreline. So I do think we want to be very specific about that to save what ended up being a year of argument and a lot of court costs.

Mr. Chaikin: Okay, those comments are well noted because I think I should put a big asterisk about that, and make sure we have that fine-tuned before we have our final draft.

Okay, just to move forward, you're all okay? Just a little bit longer, and then we can plow through this, and we can be complete—our meeting? Okay, we're just gonna keep barging through this.

1. Rules of Practice and Procedure

The Rules of Practice of Procedure, if we look on page 1, there is just some minor changes. One – at the very top up there, it starts talking about our office. And it says something about our office being in Kaunakakai. And then a couple paragraphs later, it tells everybody to send all the documents to some other office in Wailuku. So it's kind of confusing. So we are just gonna clarify that.

Did you wanna take a five-minute break? Okay, we can do that. So let's take a five-minute break, and then we'll reconvene, and we'll finish up on these two sections more, and then we'll be good to go. Okay? So we're just taking a short break.

(A recess was then taken at 2:18 p.m. and the meeting reconvened at 2:28 p.m.)

Okay, with that, I'd like to reconvene this meeting of the Molokai Planning Commission. And with that, we're taking a look at our – the last two sets of rules. And this one is the Rules of Practice and Procedure. I'm just gonna briefly go over some of the changes that we're requesting being made to this set of rules.

Okay, on page – on that first page, as I said before under the section of Office, under Communications, we're just gonna make some slight changes there where instead of talking about our office on Maui, we're gonna say, "The Molokai Planning Commission care of the Maui Planning Department," so it won't be confusing with the multiple offices.

Further down under "d," you'll see a section that's underlined and it talks about Chapter 92. This is – Mike came up with this, because what's it talking about is we have to allow people to testify and put in their own viewpoints and data. But what Mike is saying, unless the item is exempt from the positions of the Sunshine Law. So there's certain instances where we

don't have to allow people to testify. So that's gonna now be in our rules. Did you wanna say anything about that?

Mr. Hopper: Just for contested case hearings or certain other proceedings says they are exempt from the Sunshine Law, I wouldn't want your rules to take away your right to have like closed deliberations or a closed hearing if the State law allows you to do that. So that's basically – you can still allow testimony in contested cases, if you want, but if the law didn't require you, I wouldn't want you to have a rule that's more restrictive than what the State law was on that.

Mr. Chaikin: Okay. Then further down on the page is just a slight typo that we're correcting. On the next page, which is page 2, right in the middle of that page we're talking about our minutes, and we're talking about recordings made at the meetings. And then people have the right to get the recording, but sometimes we don't have a recording because it's not required. So we're just changing that to reflect that and say, "in the event that the recording is available," just to make that a little bit more workable.

Okay, at the very bottom when we make a decision and order, it can be mailed or hand-delivered there are the very bottom there. There's a slight change. On the next page, page 3, all – under "d," you get "c," and then "d." It says "All final decisions and orders should be issued in writing within forty-five days." And that's being changed to "sixty days after the vote of the authority." Now, that's something that we can talk about, but that's what we're giving them just a little bit more time on that. And we can figure out under deliberations whether or not that's an appropriate amount of time or not.

Okay, further down on that page under "a," it talks about, "Any person or a party to a proceeding before the authority may appear in his or her own behalf or as an authorized representative of–", and we're sticking in "an individual." So it listed all these things, but it never listed an individual. So we're just putting that in there.

At the bottom of that page, we're just making some clarification there, "at the addresses provided in these rules."

Okay, on the next page, page 4, we start by talking about the documents that need to be submitted to this Commission. And we have very strict guidance on how those documents should be submitted. Like we say things like, "The impression shall be on one side of the paper only and shall be double-spaced." But in the interest of saving paper and being a little bit more conscientious about the environment, we wanna eliminate that sentence about the impression shall be only on one side of the paper and shall be double-spaced, and just say– Did you wanna say something?

Mr. Hopper: Well, the reason that's not in here now is I think I was waiting for the Department. I don't know if Molokai has a two-sided copier here that it can use. It does? Okay, well, then we can certainly make that change. That's the – when I forwarded this question to the Department, I think they said we might have trouble making double-sided copies, but if they can, then I think we can certainly make that change.

Mr. Sprinzel: It says "Copies shall be clear and permanently legible." I think that covers it.

Mr. Chaikin: Right. We're just not stating whether or not we're gonna require either one or two sides. We're just taking it out that we require it to be on one side.

Okay, under 3, if you go further down the page, you got 1, 2, and then 3. And that's talking about signatures. Now, we have people come before this Commission that are like agents of the applicant. They're not the applicant. And we don't really know what the relationship is, if they're really able to speak on their behalf or not. I mean, we just talk to them up here like they're some sort of authorized agent. What our rules used to say is "each person's counsel," which means that somebody can have some other legal – a lawyer or something prepare the documents and sign them, but in practice, we have architects, and we have just – like Luigi. I don't know what he is. He's not an architect, but he's a project manager. So what we wanna do in here is just add the words, "each person's counsel or authorized representative" just to make it a little bit more official. Okay, that's it on that page.

On the next page, which is 5, there's just one minor change in the middle of "Contents of petition to intervene." It's just adding a little more clarity there.

Okay, on the next page 6, just some more clarity there, "which may be set by the authority." Before, we had just some ambiguous period of time. And instead of leaving it like that, we said "which may be set by the authority," just giving us the authority to set the time rather than just keep at reasonable, whatever that means. Different things to different people.

In the middle of that page, it says, "by a party to this proceeding." Let's see. Okay, here's kind of an example of I think what Kalipi was saying, "Petitions for reconsideration on any final order." Okay, so who can submit this petition? It can be submitted by a party to the proceeding. So some Joe Blow that just lives in the – say, an end of the island can't necessarily submit something there.

Okay, the next thing under Appeals, I think, Mike, you just put in some clarifying wording there? Is that correct or what?

Mr. Hopper: This is in the contested case hearing sections, which is usually when you send something to a hearing officer or decide to grant a contested case other than a notice of violation appeal. So basically, this already complies with State law. Parties to a contested

case proceeding, not just proceedings, in general. So it's kind of clarifying that. You know, not necessarily every proceeding is something that you can get judicial relief from. So I wouldn't want you to expand why someone could go to court if they wouldn't have the right to go to court otherwise. So basically, that's just clarifying when you can go to court and really mirrors the State law.

Mr. Chaikin: Okay, so on the next page, page 7, Item No. D, is just an example of how we fix that \$250, and took that figure out, and tied it to the County budget.

On the bottom of the page, it's just repairing the notice in the newspaper so it appears in the Molokai paper.

Going to the next page 8, we just added the word, "amendment" there at the top under "proposed rule" so it could also be an amendment.

The next change is in the next paragraph. We took out the word, "agency," and instead, put "authority," which is us.

Further down on that paper is another example of how we fix the newspaper rule. And that's it for that page.

Going to page 9 under Purpose—

Mr. Kalipi: Really quick. Sorry.

Mr. Chaikin: Yeah, go ahead.

Mr. Kalipi: You know the — I don't really see it, but you know the newspaper one? Is there any chance of also inputting possibly like the public posterboard? I know everybody look at Friendly Market and by the bank. I don't know if it's listed in there. Just adding my two cents, you know. But I know somebody already post it up already, but I don't know if you want that language in there. But I don't think any time soon in the next 20 years that poster board is gonna go away. And everybody love — everybody go shopping and go Friendly Market so—

Mr. Chaikin: Do you wanna speak to that? I mean, I know that as a practice we put our agendas up on the bulletin board, but is that something—? These are required requirements of the applicant. Is that correct? In some cases, I guess, the Department.

Mr. Hopper: It's gonna vary what you have — where the publication has to be tremendously throughout your rules. The Department has to post proposed amendments to legislation. The applicant might have to post for an SMA permit or emergency permit. There's a lot of

different kinds of things that could be posted in the – advertised in the newspaper. The Department can maybe speak to it.

I don't know if anything that ever said – beyond saying you gotta publish in the newspaper where exactly you have to post something. Usually it's just the Department says, yeah, I'll do that. I don't think it would be illegal, though, for you to prefer to – you say. I would wanna see something like, "if available, the poster board in front of Friendly Market," or something like that because if it disappears, you wouldn't want someone to not be able to comply with it. But I think under your rules you probably could dictate that one be placed there. It would be new. I don't know of any rule that does that, but I don't see anything illegal about that. Maybe the Department could comment. I don't know, but that's my initial thoughts.

Mr. Kalipi: Mike, we don't have to really say the store. We can just maybe a public poster board.

Mr. Sprinzel: There are five, I think, five boards.

Mr. Kalipi: Yeah, so we should – I mean, I'm just saying it's already being kind of done. And it's a really good way to communicate with the public 'cause, yeah, the average Joe, and everybody else are looking at the poster board. And so I just thought it would be just a good compliment to put that – to say that – post'em on the public poster board.

Mr. Sprinzel: I used to work at the Department of Education. They put quite a lot of stuff on the boards referring to meetings and things.

Mr. Hopper: The only issue would be if it's a rule requirement and someone doesn't do it, then you kinda can't hear the application. That would be the only potential issue. It would be just as if they didn't publish in the newspaper, and it came before you on an agenda, and someone said, hey, they never published in the newspaper. Then, yeah, you'd have to not hear it. Same thing would be, hey, you didn't publish where you said you were suppose to publish. Well, then you can't grant the permit or whatever.

Mr. Sprinzel: But it could be an alternative.

Mr. Hopper: I'm not sure. Alternative to—?

Mr. Chaikin: Go ahead, Director Spence.

Mr. Spence: Just because Mike kind of invited a little bit of opinion, I mean, you can prove that you published it in the paper. You can get an affidavit from the paper saying this is when we published this. You can't get an affidavit from Friendly Isle Market that, you know,

this was posted up on their bulletin board. And you take a picture, well, the photo shopped the picture, you know. I mean, you can say – this would be a case where you say you should do something not absolutely must. You shall. You know, there's a difference there.

Mr. Chaikin: A good point, yeah. I think that's something that we should continue to – we should put an asterisk there. And before we come up with our final rule, make sure we're all satisfied with what that says.

Okay, on page 9, you see just under the top of the page, it says, "Purpose." And then it talks about – let's see – it talks about certain things. And it says "special management area permit." Should that have an "s" on the end, Michael? Yeah, alright, Mike, why don't you go ahead and talk about that? I was just doing a grammatical change there.

Mr. Hopper: You're right. Just to let you know, the sub chapter 7 is being changed. And I know the Department may have comments on this. I'm not saying they should give them to you now, but this is the order to show cause for special management area permits, and exemptions, shoreline setback variances, special use permits, and other permits and approvals. This is where I was talking about where if you – if there's a permit that you're – that there's a belief that it's not in compliance with a condition, you can have a hearing to determine if it is in compliance with the condition. And it pretty much mirrors the State Land Use Commission's rules, so that's the idea behind this one.

And it's – also in this section – oh, no, that's sub chapter 9, sorry. Yeah, this sub chapter 7 is basically to do that. Interestingly enough, Molokai, again, being ahead of the game versus other Commissions, had procedures in place that basically, allowed for an order to show cause, and you still have those in your current rules right now, which was interesting to me.

It says – it does talk about – basically, in the existing sections, you look at page 301-11, there's a bracketed section, which is coming out called, Procedures. And it talks about a petition. And it says basically, you can – you know, there can be a petition presented to the Commission, treat it as a public hearing. And then it says, "Decision." It says, "The authority shall have the power to amend or modify or withdraw the particular permit should it find failure to comply with any terms or conditions thereof." So that does exist there in your current rules. I think what we're doing as far as the order to show cause section is come up with kind of a more specific order to show cause proceeding. It's a bit different than the one you have existing, but I think is a bit more uniformed. It's the same one Lanai has passed for their rules. Maui did consider it, but did not adopt it. And so here's an option for you to look at. So that's the purpose behind this sub chapter 7, and Steve made that change.

It will specifically allow you to look at any permit that you issue: a special use permit, SMA permit, shoreline setback variance, things like that, exemptions as well. Basically, if someone – if you give an exemption, and someone does something that is different than the exemption, you can look at that, and revoke the exemption, if you have a hearing and determine, hey, you failed to do what you said you were gonna do so–

Mr. Chaikin: Okay. Thanks, Mike. And you guys can read through this on your own and see if you've got any additional comments, but that's pretty much it. As we go through the thing, there's some more pretty minor changes, but nothing is really substantive.

The only other thing is there was one section that's not within the stuff that Michael gave you. It's actually in our rules that weren't being amended. There's one section called, Attendance. And it talks about the attendance of the Commissioners. We wanted to inject something in there so there would be some kind of a process. In the event that the Commission wanted to take some sort of action, they could refer back to the rules. Did you come up with something for that? I had the Vice-Chair work on that.

Mr. Sprinzel: Yeah, we thought under Attendance, if a Member is absent for more 50% of the meetings, the Commission may request that the Mayor takes appropriate action. Just a – he doesn't have to do anything, he or she, but they can – we thought it would be an idea to at least have the possibility of booting somebody off.

Mr. Chaikin: Okay. And there's one more section which you don't have in front of you unless you got the entire set of the rules, but it's called, Computation of time. And as you look through all of our rules, we refer to, you know, the number of days. It has to be within a certain number of days, or not to exceed so many days, or whatever, but some of the time we refer to them as days. Sometimes we refer to them as calendar days. But in any event, the number of days always reflects back to the computation of time within our rules. So instead of trying to inject confusion into people by having two terms for the same thing, I'm asking Corp. Counsel to go all the way through all of our rules and wherever it says, "calendar days," just take out the word, "calendar," and we'll just call them all "days." Is there any problem with doing that?

Mr. Hopper: Well, or you could say "days in accordance with 12-301-14," but probably "uniformed" and saying "computation of time" here, I think is the rule everyone would have to refer back to. The only risk is if you take it out of each section, someone might just look at days, and then have to refer back, and think, oh, business days. And in fact, Steve Morgan said that, oh, business days in one of his things, and that's not necessarily the case in computation of time. But I think you could do that. If you take it all out, and then you have this general rule that applies throughout all your other rules. And you do that in other cases. I think that that's okay.

Mr. Chaikin: Yeah, 'cause I don't think there's any such thing as calendar days. I don't think there's anything— I just think if we call them “days,” then that'll be uniformed all across all of our rules. So that was it for this set of rules. So if nobody's got any questions, we'll move ahead to the last set, which is the Special Management Area Rules. And if you have all your copy available there?

Mr. Bacon: I did have one question back here on this other thing here. Oh, I know. We were talking about the representatives of owners and that sort of thing. Is there some way we can make whoever the representative is as equally responsible or equally at risk as the owner or whoever they're representing when they misrepresent what they're telling us? I mean, we've been told several times one thing by some representative, and the owner says, oh, that's not what I wanted to do, and I'm doing this anyway. And yet – and then we're stuck with this one person's doing something that if we had the opportunity to ask him specifically to his face that, are you gonna do this or not, he could've responded whereas the representative responded for him, but in the wrong direction. This is on page 4 is where sort of where we brought that thing up. It's talking about where each party's counsel, no. 3.

Mr. Hopper: Well, if you have a situation where a representative mistakes something – misstates something, and you rely on that, I mean, it could happen in a variety of situations. If someone goes forward and does a project that's different from what their representative said they were gonna do, that could be the basis for either a notice of violation or for an order to show cause petition where you could look at the exemption or permit and say, what you're doing right now, it appears to us is not what you got authorization for, and then have the hearing on that. And if it's determined that that what was done was inaccurate, then you could revoke the permit.

As far as liability of the representative, you would maybe have to add something saying that a notice of violation could be issued on the owner, contractor, or a representative at the Commission. And I don't know if any situation where that's been done or been authorized. I'd have to look into that, but I understand what your question is. Typically, though, someone can't come and misrepresent what they're going to do and then do something different. That would be something that you could issue a NOV for, a notice of violation. Or that you could have – you could look at revoking the permit for, if you have evidence of that so—

Mr. Bacon: Okay. And then the other thing is, is that when that happens, we don't have any way of stopping that work. I mean, the only person, apparently, that does any of that stuff is Tammy. And she only comes here once every six months or something like that? So is there an avenue for us to be able to stop that person?

Mr. Hopper: Well, for SMA things, the Department or the Corporation Counsel can actually go to court and seek an injunction to stop work, if there's knowledge that it's being done. I think that's been done in other cases before. You issue a notice of violation, or the Commission can have a petition for an order to show cause, but if it's something urgent like something is gonna be done, then you'd have to deal with actually going to court and filing an injunction. The Commission by itself does not have the ability to issue an injunction which is basically, an enforceable court order. It has the authority to go to court and ask if the court enjoins the activity. And there's actually case law on that. So that's what would have to happen.

Again, there'd have to evidence that something illegal's going on before you can go in for an injunction. Normally, that's handled by the Planning Department. The Department would investigate. They'd say to Corporation Counsel, hey, there's an urgent situation. I don't know if debris is falling into the ocean. There's certain problems. We need this work to stop now. And then something would have to be filed in court, if you're looking at stopping something that's like going on right at exactly that minute.

And that's in here. I believe there's stuff about filing injunctions in here. And that's in the State law as well for SMA that says that nothing in the rules will prevent a party from going directly to court. Same under zoning law as well. And the Department's done that from time to time especially in cases – different cases have gone to the Board of Variances and Appeals. And the person lost at the Board, and continued to do the use illegally. So at that point, you gotta go to court to get enforcement of a court order. And judges aren't exactly – aren't necessarily going to approve that enforcement. So you've gotta go to the judge and ask. But basically to the point where you're asking for a police enforcement of an order, you've got to court and have that done. When it comes down do it, if someone keeps doing it, then by force, you've got to get the police involved to say, you stop doing that, or else you'll be liable for – you know, a court ordered sanction or something like that. And unfortunately, that's – we've gotten to that point in certain cases.

2. Special Management Rules

Mr. Chaikin: Okay, so what we're doing is moving forward with the proposed amendments to the special management area rules. And I'm on the very first page here. We're getting rid of, as you can see, "central coordinating agency." That whole section there is coming out. Let's see. And then just some minor things on that first page.

And if you go to page 2, again in the middle, getting rid of that "central coordinating agency," and putting in "department of planning." If you go to the bottom in D, it starts getting into something that's kinda been a little bit ambiguous here at this Commission, and that's whether or not you need a shoreline survey. When do you actually need to get a shoreline survey? And that's something that we're trying to address. It seems to be –

when I went over the shoreline area rules, there's one – let me just read something that it says in there. It says, "Prior to commencement of grubbing, grading, or construction activities, the shoreline setback line shall be identified on the ground and posted with markers, posts, and other appropriate reference marks by a survey license in the State of Hawaii." So that statement sounds like you need a shoreline survey so you can put those markers prior to the commencement of any construction activity. Now, we just heard somebody wanted to put in a power pole today. That was a shoreline lot. So theoretically, that was a construction activity, and according to that rule, it sounds like they should've had a shoreline survey.

So the real question is, you know, is there some reasonable times in which we shouldn't make these people go through the added and extra expense of getting a shoreline survey? So the question is whether or not we delete that out of the shoreline rules, and bring it over to our SMA rules, and further clarify what that means? Because if we leave that in, then in all cases, it sounds like they need to have a shoreline survey if they're doing – if their lot abuts the waterfront. But sometimes it's just putting a pole and there's no way near the water.

So – but if you go to the bottom of page 2, under D, it says, "A shoreline survey if the parcel abuts—" This is what's required, "A shoreline survey if the parcel abuts the shoreline; provided, if the proposed action will occur outside of the shoreline setback area, the director may waive the survey if—" So now, here comes the big, well, if we're giving the director discretion to waive the survey if it fits in one of these following conditions. Now, here's what's written: the first, if the shoreline is fixed by manmade structures or have approved by the appropriate government agencies for which the engineering drawings exist, and locate the interface, and blah, blah, blah. And then the next one is, the shoreline is fixed by a natural stabilized geographic feature such as a cliff, rock formation. And then the thought was to add, "or an existing fish pond." The next exception would be "The proposed action involves only interior alterations to existing structures or existing utilities for which the director approved, best management practices are in place to protect the coastal zone environment." That's another exception. Yes, go ahead, Mike.

Mr. Hopper: By the way, these additional ones, we did forward this to the Planning Department, I think, Jim Buika, the Coastal Planner, to say, hey, are there situations where the Department would recommend they not require – the Commission not require a shoreline survey? I think you should review these and determine if you think are cases where you would not want a shoreline survey, if there's any additional cases where you would not want a shoreline survey in conjunction with an SMA assessment. And if you disagree with the Department, and think, yeah, they should provide a shoreline survey in these cases, you know, have that as something that you would say as well. But that's where these are coming from. The Planning Department was asked, hey, are there cases where you think it would be helpful to not have – or you don't think one would be necessary

to protect the shoreline, or where it's redundant, or where you're already not requiring shoreline surveys, and that's what they gave. So I would review this carefully and see if you agree with it or not.

Mr. Chaikin: Okay, there's another exception, you know, if it's a 150 feet back from the highest wash of waves, and there was a professional shoreline survey within the last three years. And then it goes on. There's another one: proposed action removes – or if it's for just getting non-permitted encroachments that you could do that without getting a survey. And there's another one: proposed action is limited to the safety-related, health-related repairs to existing structures.

Okay, so that's something that you should review and give some thought to. And then, Mike, if you could maybe also take into light that we have that other statement in the shoreline setback rules that says if there's any construction that you should put the markers down. Do you know what I'm talking about?

Mr. Hopper: It depends on what you guys want. If you wanna take that out and think it's onerous, or if you wanna require certain – you know, to mark up the shoreline every time they do work. I mean, it's up to the Commission, really. We can certainly write the rules the way the Commission likes, but it's good to point that out.

Mr. Bacon: I had a question on where you inserted the existing fish ponds up there on the second one. You know, we keep having these problems where they say, okay, we don't have shore front property even though – because they're inside – they're on the shore side of a fish pond. So there's a wall out there. And some of those walls or some of those ponds have TMKs and some of them don't. And they say, oh, well, there's a TMK on that one so – on the shore front. And yet, they're inter-titled zone. I mean, it's – can we determine that anything that's exposed to inter-title activity is shoreline as opposed to somebody saying, oh, well, I'm – you know, I'm inside the TMK? I mean, I'm protected from that by a fish pond. If we tie that shoreline into – you know, somehow what they're calling shore front, shoreline shore front property as being something that's being exposed to that inter-title zone, inter-title.

Mr. Chaikin: Well, I can see what you're saying is if you have a lot, and then in front of you is a TMK with a fish pond, you could say the outer wall was the shoreline, you know. And then even though you're right next to the water, you're more than a hundred feet there, or some kind of a situation where that might be – I mean, we can just scratch it and take it out, too, because it's more confusing to have it in. I don't know. Does that clarify or does it make it more confusing to have that in there?

Mr. Hopper: Maybe there's gonna be cases when you want a survey done. Do you want a shoreline survey done in a case like that? I think you could probably dictate that, if you

wanted. I don't know if a shoreline survey would help you if they're gonna consider shoreline setback area not part of the fish pond. I mean, the purpose in this is requiring a shoreline setback – a shoreline survey, and it's to determine if you're in the setback area. I think that's the main idea behind this. If you want that, that's fine, but I wouldn't just put it in there because you think it makes it more restrictive. I think you would put it in there because you want the information in the shoreline survey to help you make your decision. Remember, this is part of an assessment. This is not part of the permitting. It's for assessments, so that should be considered.

Mr. Bacon: I guess my question is, so inserting that in there, does that include the lots that are inside the wall even though it has a TMK? I don't wanna exclude those lots from having to do the shoreline process.

Mr. Hopper: Well, if the shoreline is fixed by one thing that is considered a natural stabilized geographic feature such as cliffs and rock formations or an existing fish pond, so if your shoreline is fixed by an existing fish pond then, no, you wouldn't have to do a survey under this. That's what it's saying.

Ms. McPherson: Chair, may I add a comment? That we have inner fish pond walls and we have outer fish pond walls. And one thing that we'll – it does happen when there is a Planner on-island reviewing these projects is that there would be a site visit, and that site visit, if there is a fish pond wall involved, I think should happen at high tide, if it all possible. And if there's any question about how close it is to the water that a site visit by a Staff Planner might really help in that regard. I think where you run into problems is when people are just relying on these rules, and they're not actually looking at the real situation on the ground or in the water, as the case may be.

Mr. Hopper: In this case, the Director would be authorized to say in certain cases that if the Director believes that a natural – the shoreline's fixed by an existing fish pond, then the Director could say we're waiving shoreline setback or shoreline survey. So if it comes to you as an exemption or a permit, you can say, where's the shoreline survey? The Director would say, well, it looks like the fish pond was a stabilizing feature, so we didn't require one. That's what could happen in a certain case.

Mr. Bacon: Okay, the example I keep, you know, thinking about is the blue tile roof. You know, it's a situation where a lot of times the yard is dry, and other times, the ocean's right up underneath that house. And yet, he hasn't been subject to some of these shoreline policies that we have. And yet, who's closer than he is, you know, than that house is?

Mr. Chaikin: Yeah, that's a point well taken. And I've talked over with the Committee Member. And I think the best for us to do is strike that out and not have that fish pond in

there, 'cause it just maybe will give people more rights than we don't want them to have. So we'll go ahead and scratch that.

So I would just say to the Commission to review this section because it's a difficult section because like for instance, we heard that application today. They're putting in a driveway. They're putting in a telephone pole. I mean, if you really read these rules, it sounds like she should've come forward with a shoreline setback. And how can we put that in our rules where it gives some leeway to the Department without, you know, taking away the – without them taking advantage of that situation? Did you wanna say something, Director?

Mr. Spence: Yes, thank you, Mr. Chairman. Just a comment on – you have to remember what is the purpose for the shoreline survey? Is whatever action an applicant going to take, is it going to affect shoreline processes? Is it going to alter the shoreline? Is there a potential for runoff into the ocean? You know, you think about a power pole. I think if it's – I don't know what the purpose would be – unless that power pole is right on the water, I don't know what the purpose, you know, of a certified shoreline that takes six months to get through DLNR and several thousand dollars from a surveyor, what that's going to prove to anybody. I mean, you can look at the plot plan that an applicant has to provide and go, no, that's gonna harm anything on the shoreline. There's other things to look at for impacts with power poles that would certainly – that are going to be addressed in the assessment.

And I think would just address one thing just like an example, I was told I need a certified shoreline for a call box at Kokee Beach in Hana. You know, the four-inch pipe? We're just replacing one with another. And it served no purpose for affecting the shoreline, or determining impacts, or anything of the sort. So I think your Staff is pretty well equipped when they review an assessment. They go, oh, there's an impact here, or, oh, there's not an impact here. And it's gonna come to you anyway, so I think it would be good to let the Director have a little leeway. And I'm gonna be looking at these things anyway, and subsequent Directors.

Mr. Hopper: That's a good point because this doesn't change the rights to somebody. If you're doing something in the shoreline setback area, you need to get a shoreline setback variance or an SMA permit. The reason to require this is because you want the information in a given case. But saying you don't have to provide a survey in a certain case doesn't give that person more rights other than the right to do – to get their permit process without the survey. But they would still not be allowed to have, you know, adverse environmental or ecological effects. And they still wouldn't be allowed to build in a shoreline setback area. Just to keep that mind when you're reading these, these don't expand or contract the rights of somebody doing something in a shoreline setback area. It just – it says in cases where you want this additional information and why – how it would be useful to you. So keep that in mind. The stuff that determines their rights of the person is in the State law and there's other sections other than the application requirement. So just as a note.

Mr. Spence: Yeah, I mean, Staff is definitely gonna take a look at an assessment by an applicant and go, are you building really close to the shoreline? You need a certification. You're putting a power pole, if it's about 120 feet away from the shoreline, you don't need, you know. There's gonna be some common sense practiced here so—

Mr. Chaikin: Okay, so maybe – you know, you're gonna have an opportunity to weigh in on these rules and provide recommendations to us. So if you could maybe figure out some kind of verbiage that works for you guys. And then we can take a look at that and see if it looks like something that we can all live with so—

Mr. Spence: Yes. We'll provide comments to the Commission.

Mr. Chaikin: Alright, well, thank you. Let's just continue to move forward here. Beyond the shoreline survey, if you go on page 4, no. E, it also has a written description of the proposed action. It lists some stuff. And what we've added is "square footage." So now it's gonna be mandatory that they provide the square footage of the proposed action.

Further down at the middle of the page, and Item iv or 4, it says – it used to say, "Any probable adverse environmental effects." We changed that to say, "any potential," just to kind of keep the applicant – you know, trying to get him to list any potential adverse effects that his project may have.

And then H down below, it says "A written valuation. A written valuation— this is something that has been kind of an issue here at the Commission because we have people come forward, and they estimate the cost of their project. And they base it on doing all the work themselves. They're gonna get the lumber for free from somebody. And so the cost is very low. And what we're looking for is the cost that's universal from one applicant to the next so that we're using the same measuring stick for everybody. And the reason we do this is to determine whether it's a minor or a major in the event that they have to get a permit. So we're gonna change that language in there. And we're gonna use a – we're actually going to put "valuation" in the definition section. And it's gonna be the State— Do you happen to have that? Anyway, we're gonna link it to the State's definition. It's pretty explicit as to what "valuation" means. And it's listed a couple times. Did you wanna speak to it?

Mr. Hopper: Yeah, as far as valuation, this will determine if something's over \$125,000 or below for a major or minor permit. You really don't have any discretion to determine what is used to calculate that, 'cause the State law says, "Valuation shall be determined by the authority." It means the estimated cost to replace the structure in-kind based on current replacement costs, or in the case of other development as defined above, the fair market value of the development. So you have to put that in as your definition. So I think if you're replacing it, you look at replacing costs, but it seems otherwise, you deal with the fair market value of the development. So this basically gives you the standard that you have

to use to determine valuation. And rather than get very fancy with it, I think just duplicating this definition would be what you would want to use. Again, that just determines whether it's \$125,000 or below. It doesn't determine if you need a permit or an assessment. It just determines if you get a major or a minor, which since the Commission grants both, it's not a huge difference. It just requires a public hearing. But that's important as far as the definition, I think.

Mr. Chaikin: Yeah, on the next page on page 5, on A, what it used to say is, "The applicant's estimate of the total cost." So what we're trying to do is get the total cost to be more uniformed. So we're gonna fix that language in there and Michael's gonna get that for us.

Just above that, there's just a bit where it talks about submitting an application for review and giving them 30 days to review it.

Okay, on 6, there's nothing consequential. On 7 is something of substance. If we look at Item No. f, it says, "Based upon the assessment and review of the application, the director shall—" and we're taking that out. And we're putting in "Notify the applicant in writing within seventy-five calendar days." It used to be "thirty calendar days." I don't know if 75 is overly generous to give the Planning Department 75 days to review these applications. So that's something that we should take a look at. Thirty days might be a little bit tight. Yeah, did you wanna comment on that?

Mr. Hopper: Yeah, you just – in the other section – if you're gonna want the Department to send assessments around for agency comments, and tell the agencies to get back in 30 days, you'd have to give more than 30 days, I think, to make the determination 'cause you've got to get the comments back. If you don't want the Department sending these out for comments before they make the assessment determination, that's fine. You can deal with the date, but if you, as a Commission, will expect the Department to send out stuff for agency comments for assessments, I don't think it's realistic to say that in 30 days from the date they get the application, they have to determine if it's exempt or not, just as a comment. I think you can go either way. If you want it expedited and not to do that review for assessments, only for permits, you could have it that way, but I think the Commission's kind of said that it wants to have agency comments for its assessments. Again, up to the Commission how it wants the Department to handle this.

Mr. Chaikin: Okay, right now, it says "seventy-five calendar days." That's open for discussion and we can refine that as we move forward.

On page 8, we're just repairing the newspaper. Again on 9, we're repairing the newspaper.

On page 10, this is where when they come to us for an exemption. If we look at “b,” an applicant comes to us for an exemption, and if we defer it, we’ve only got 30 days. And sometimes that’s problematic when we skip meetings and stuff, so we changed that to 45 days just to give us a little bit more breathing room there.

Down at the bottom on no. 1, see where it says “1”? Oh, yeah, go ahead, Mike.

Mr. Hopper: Just as another note, we’re codifying the Commission practice of saying that if the Commission doesn’t make a decision within 45 days, that the proposed action shall be deemed exempt. If you have a different view of that as a Commission, and want some other thing to happen, if you can’t make a decision within 45 days, this would be the place to put it in there. If you wanna say that’ll automatically make it an SMA permit or something instead, maybe we can look at that. But based on the way the rules are written, since this says you gotta take action to basically, disagree with the exemption within that time period, this is codifying what has been – has been done. But again, it’s up to you. You can dictate more time, less time, and what happens if you don’t make the decision within the time period.

Mr. Kalipi: Just for a comment, if it’s a really toughy, if it’s a really tough one, maybe some language like “An extension can be granted with two-thirds’ Commission votes for a period of time.” It could be 15, 30 days, or whatever. So giving the Commissioners more time to whatever, gather information, or deliberate a tough case. So I’m just putting in that – the thought of the language, “an extension,” or “extended time can be granted with two-thirds vote,” and putting in a time period.

Mr. Hopper: Yeah, I mean, you could do that. I think the philosophy behind an exemption determination is that it’s not an approval or denial of the project, necessarily. It’s determining should they get a permit or not. And if it’s that much of an issue, you know, maybe the thought should be maybe they should probably get a permit versus an exemption. ‘Cause you can say you’ve gotta get a permit, and then you have the time. That was the idea, I think, behind the initial 30 days. Now, it’s 45. So we’re putting that out there.

I think what Commissioner Kalipi said, I think you could do that. I think you could say, “The Commission on its own motion may extend this time.” We can look at that because I don’t know if an applicant’s gonna say, hey, you extended his time, you should do that to mine, too, or something, but I don’t know. I don’t see a problem with that, initially, though. I think you could do that, if you wanted.

Mr. Bacon: Yeah, I’d chime in on the first one that Michael was talking about in terms of if we don’t make a decision within those 30 or 45 days, if it goes to a permit rather than the exemption. I think that’s a good way to do it because the people looking at it, going through

this experience myself, you're looking at it, and you say, okay, if I can hold on for 30 days then I get it, you know? But if – you know, because we didn't have quorum or whatever it was, you know, any of those reasons could've put me in the exempt thing, you know? And that wouldn't be fair. And I think if we stick it into the permit thing, then everybody gets a fair shake. I like that pushing it over into the permit process. I think that's good.

Mr. Chaikin: Okay, we can continue to get input on that. Again, today is not really the day that we need to make decisions on the changes. We're just basically, hearing what the Committee on the proposed rule changes has to say. And then we're gonna have this on the agenda again, which we can kind of like deliberate the relative merits of each of these proposed changes or whatever you guys wanna talk about.

But just to move forward because we are getting there, on page 10 towards the bottom, earlier we talked about what are the costs of a development or of an action so we can decide whether or not it's a minor or a major permit. Now, if the people just come in for a major permit, all of a sudden, we're saying in our rules that all the information and documented required before is necessary, excluding the valuation of the project. So if somebody comes in with a house, a forty-million-dollar house in the west end, our rules say they don't have to tell us it's a forty-million-dollar house. All they have to tell us they're building a house.

So what I wanna do is on – right there on the bottom, you see that no. 1? It says, "All information and documentation required pursuant to Section 12–," blah, blah, blah, and then comma, "excluding valuation of the development." We wanna get rid of "excluding valuation of the development," because it is relevant. If it's a 20-million-dollar house, there's gonna be substantially more potential impacts to the environment than there would be if it was only a two hundred-thousand-dollar house. So I think it is relevant.

Okay, the next page, item – page 11, again, just some housekeeping stuff on that page. Nothing monumental.

Page 12, again here we have the Commission shall approve, and then we added "or deny," because before, we just had "approve the permit," so we have "or deny a permit, based on the criteria," blah, blah, blah. And that's pretty much it for that page.

The next page under 6, we're just updating – getting rid of the "VHS format," and "tape," and stuff like that, and just putting "video," something a little more technologically up to date. Okay?

And then on the very bottom of that page, we're adding, "A compliance report showing compliance with all conditions of such permit." That's if somebody wants to amend their

permit or something, they have to come forward with a compliance report with their application.

On the next page, let's see, we just added, "Any other information the director deems necessary."

Next page, 15, okay, if we look at the top of the page at No. e, it's talking about when is an application deemed complete. And it's deemed complete "After review and final comment by appropriate agencies." That's what it says, but there might be a case where there is no final comment. You send out the comments and no comments come back. So it's not a good thing to have it tied to. So if we are gonna have final comment, we need to say something like, "After review and final comment or the allotted time period has passed in which they're entitled to review," or something along those lines. And I think Michael already has that language.

Mr. Hopper: I put that in a different section. I had that in "e" on page 302-12 saying, "Upon receipt of final agency comments, or the failure of the agency to comment within thirty days, the application shall be deemed complete by the director and shall be scheduled for public hearing." So I have that there. I didn't make – have any proposed changes for "e" at this point. I think by putting that in there, it does say if you don't comment in 30 days, then that's it, but I don't see a problem with that "e" section. You could put that language in, though, if you wanted to, though.

Mr. Chaikin: Yeah, I'd say, yeah, go ahead and put that in. The bottom, housekeeping with the newspaper.

Page 16, there's this thing in the middle of the page. And I talked to Michael about this. It says, "The commission must approve an amendment to the special management area boundaries." This is if we're – "by a two-thirds vote of the members present." And really what that means is you gotta have at least five or six people vote yes. And it's kinda confusing 'cause it says that, but it refers back to, you know, the rules that we have about voting and the– So you might wanna take a look at that. If that's clear enough for you guys, we can leave it like that. If not, we can add additional clarity and refer back to the section on – what? Voting in our rules.

Okay, under the bottom there, it gets into enforcement, has or "has not," okay, "or any proposed action that has not received an assessment." Okay, this is again, we're getting into enforcement, notice of violations, and all of that. And Michael has done substantial work to try to beef up and make it a little bit more applicable and relevant to something that we can – you know, that we can utilize. And so, I don't know, Michael, do you wanna talk a little bit about what's coming up here? Because as you start looking forward on the pages ahead, there's quite a bit of changes.

Mr. Hopper: Basically, the same stuff that we did for the shoreline rules. I won't go into it again other than to say when you review these rules, you were all given a set of existing rules for the Planning Commission. In order to really understand these, these are in Ramseyer format, which means that we print only the amendments that are made. We don't – this is not a reprint of your entire rules. So to actually really understand these, you should go through with one of these and the existing set of rules, and see which sections are being changed and how. That's really the best way to understand them. But, yeah, this section here, most of it's new. It's underlined. And it's very similar to what's done in the shoreline area, which I already went over, so I won't do that again.

Mr. Chaikin: Okay, on the bottom of page 16, there's a change and it says, "or any proposed action that has not received an assessment." Okay, so basically, they're saying if you didn't do what you were supposed to do, it shall be removed, or the violation shall be corrected by immediate application for and subsequent granting of an appropriate permit. And in there I wanted to put, "or exemption," because the people, even after-the-fact, could potentially get an exemption. So after the word, "appropriate permit or exemption."

Okay, next page, just some different – some minor stuff, "a manmade," has been changed to "artificial" for enforcement purposes. And then actually that whole next section is out. And then you go to page 18, most of that whole page is out.

Mr. Hopper: Yeah, as a note, if you see a bracket, for those who don't know, everything within the brackets is being deleted. So just so you know.

Mr. Chaikin: Okay, and then you go to the bottom of 18, yeah, that's in there. And then it starts to get into the issue of notice of violations. And again, we've gotta repair that part where it talks about the certified mail of how we tell the people that they've got the notice of violation. So he's gonna work on that. And then it's pretty much similar to what we had already talked about.

Okay, again, the thing becomes final and the fines get solidified 30 days after the mailing of the notice of appeal – I mean, notice of violation, if it isn't appealed within that period. So we're gonna beef up that mailing as we talked about earlier, and make it a little bit more onerous on notice where the people have to receive.

Okay, just keep going. Twenty-one, again, that's an appeal of a Director decision. Okay, go ahead.

Mr. Hopper: As a note, I know I've spent a year on this, and I still find stuff that we should've done a little differently. The appeal of a Director decision in the SMA rules is I think probably what we should have in the shoreline rules. It goes over a few extra things. In here, is the Maui Planning Commission SMA rules. It says things like if the Director's

decision was not required to be served on the person who wants to appeal, then it's ten days after the meeting in which the Commission received notification of a Director's decision. And then it goes, you know, with different situations. I think – and then there's a Section b. It says, appeal of the commission's decision goes to court, which is the law anyway, but it's in there. So I think we're gonna change the shoreline rule draft to read like this. And also put in Commissioner – I think take a stab, if you want, at what Commissioner Kalipi said about the – about considering some standing language, or at least saying, hey, you gotta say what your basis for standing is. Maybe go into the contents of what the notice of appeal has to say, because there's really no guide there. And for the Board of Variances and Appeals, for example, it says your notice of appeal has to have X, Y, and Z in it and have certain things. It's tough because you never know what the person may try to appeal, but I think we can narrow it down and have an effort there. So that's all the comment I have there.

Mr. Chaikin: Okay, that pretty much concludes the special management area rules. So that completes all four sets. So, yeah, the real question is, what's next? I mean, how – what's the best way that we can proceed on that. And, Michael, did you wanna–?

Mr. Hopper: Oh, just as a note, also the rules of practice and procedure have a Sub Chapter 9 in them. It's not Ramseyered because it's all new. Okay? And it's not amending a section. It's adding a new section. When you add a new section, you don't underline the whole thing. That goes into the expedited appeal process that you'd be hearing if it was a violation under. So I would examine that 'cause that's all new. Again, it's at the very end of the rules of practice and procedure. It starts on page 301-12. It's the Sub Chapter 9. I would be aware this is all new stuff, so you should take a look at it. It's modeled after kind of the BVA rules and what it was adopted on Lanai. Again, that's all new. That created confusion with the Maui Planning Commission because it wasn't underlined, so I just wanted to comment to take a look at that.

Mr. Chaikin: Okay, so as I said earlier, this is just one step of a multi step process. And what we have to do is figure out how we can kinda streamline this process so we don't keep reiterating the same stuff over and over again. And we know already that we have to let the Planning Department have an opportunity to, you know, take a good look at this, and see if there's anything that they wanna inject into the process. Also, you know, the public, we need to notice, and we give the public an opportunity. Also, I know you Commissioners had some stuff that you wanted to potentially have changed or add into this. So I don't know. I'm open for discussion of, you know, what the best way to proceed is. I mean, we can – I don't know how much time the Planning Department wants for them to review and get back, but maybe we can have a little discussion, and then figure out the best way forward. Does any of the Commissioners have any thought on this?

Mr. Kalipi: A quick thought—maybe we can submit the paperwork to the Planning Department so they can start on it. The other thing is that maybe we can take maybe an hour of our regular meeting or section of our regular meeting, and just go over one part as part of our agenda instead of spending the whole day on it. And then one section at a time, the Planning Department can be here dialoguing with the Commissioners to shore up the correct languages or to beef up the draft. And then we just take it one section at a time, but we also – receiving our regular agenda from whatever projects our Planner would come forward instead of making a whole day out of it so we – our minds are still fresh and not fried by the end of the day, something like that.

Mr. Chaikin: Alright. So basically, you know, we, as Commissioners, have to refine the thing. Also, we've got the Planning Department. Clayton, can I put you on the spot? You probably have better than anyone else here an understanding of how these rules apply and –you know, under practice. If you were gonna take a look at these rules, and try to make things that work better for you guys and for us, how much time would you need to come up with some recommendations to this Commission?

Mr. Yoshida: Thank you, Mr. Chairman, Members of the Commission. Well, I guess we're about to go through our annual changeover or readjustment period when we'll have some new Commissioners coming on board. So I guess the April meetings are kinda devoted to orientation sessions. So we need to kinda talk internally about the amendments that you're proposing as it affects various Divisions, including our Zoning Administration and Enforcement Division. So maybe soon after we get through with the orientation sessions, probably the Director can comment further. We can start to systematically deal with the rules. Maybe start with the rules of practice and procedure and then work our way from there, but I'll leave it to the Director to comment.

Mr. Spence: I pretty much agree with Clayton. You're gonna have orientation. You're gonna have new Members familiarizing themselves with Commission's practices and whatnot. We also have – there's a number of pieces of legislation going through the State right now. We don't know if that would somehow affect your rules. We'd like to keep those current. If something's approved in the State, we're gonna try to want to model your rules after those things. So it's kind of hard to put a time limit or a good estimate. I do like Commissioner Kalipi's suggestion that we take one piece at a time, though. Maybe if we start off with some of the Commission's – say, the special use permit rules, start off with that rather than SMA, 'cause that seems to be what most of the legislature is focused. We could proceed with something like that first.

Mr. Chaikin: Okay, just one observation. I think that if we were going to have you guys review something, it would be something that we collectively, as a Commission, would like to see as our rules. And I don't think we're there yet. Us, as a Commission, we've got a few loose ends, I think, that we need to clear up and hear more from the Commission. And

then get something together, and then submit it to the Planning Department and say, this is what we would like. We've discussed it. This is what we'd like. And then have you an opportunity to comment from that point forward. So I think, as a Commission, at this point, we need to figure out if we wanna have this on our agenda next meeting. I'm seeing, yes, over there. 'Cause I mean, we should, you know – I mean, Kalipi and myself, the next meeting is our last meeting. After that you have a bunch of freshmen, and they're not gonna be really commenting all that much on these rules. So we can – we'll stick it on the next agenda, and see how far along we can get, as a Commission, to coming up with a set of finalized rules. And then when this Commission is satisfied that we've got what we would like, then we can pass it on to the Planning Department. You guys can do what you want, come back to us, and then we can revisit some of these issues that you've brought up, and then make a final version of some sort, which will then go to Corporation Counsel, I think, for–

Mr. Spence: Okay, we can work on that.

Mr. Hopper: Yeah, we would wanna the Commission to have its comments finalized, then go to Planning, I guess, for their comments. And then the Commission would then need to re-look at it, really, to determine which of those comments it would want to put in. Those are just the Director's comments. And I, in finishing the legislation, would need to know – because these are the Commission's rules, how you wanna model them after the comments. So you'd need another look at them. And then we would – our office would then look at them. We'd need to get final approval through my boss. And then they would be posted in the newspaper for an agenda in the future. So I think it's a good idea in the next meeting or whenever else to review them again. I think get to a formal form where you're okay giving it to the Planning Department, or you can give it to the Planning Department now, and then look at the Department's comments later—either way. But I think it should be – you know, either way.

Just to comment for the next meeting or when you review these, just my general advice would be to take a look at these absolutely before the meeting, and where you're outside of the meeting to understand all the changes. I wouldn't necessarily advise going over each change as you go. I think it would maybe be – you know, what comment does each person have. You can do it item-by-item, but I do think it's gonna be very difficult for anybody for – to really go through and make their comments, and have their thoughts when they are sitting in a middle with nine people or whatever. I think doing outside of the meeting and having your comments ready to share at the meeting is a good way to do it, 'cause these are hard to go through without reading them a few times. It's – they're tough so– But that's the only advice that I have. You guys can do it anyway that you like, but that's my only comment.

Mr. Chaikin: Well, in the interest of clarity, you gave us a set of the proposed rules. We made some additional amendments to those proposed rules. So it gets a little bit confusing unless we have an updated version of where we're at right now so we can be looking at that one set. Is that feasible for you to do? Put together those few changes that I've given you by when the packets gotta go out?

Mr. Hopper: I can try. I'm not sure when the packets are to go out. And my secretary would have to make the changes in a manner that would be – I'd have to make sure they're consistent. I think I have changes in all four sets. I mean, I can certainly try to incorporate these comments. To the extent that I don't, you can still meet. You could, if you wanted to, still meet at the next meeting with the understanding that those changes have been made, and I can give those changes to you. I mean, I don't think that would be a problem, but we've had to see. It's, you know, Furlough Friday, this Friday. And then next week, I have to go to Lanai, but I think I can get most of the stuff taken care of before the next – I mean, I don't think that would be a problem.

Mr. Chaikin: Alright, well, thank you for your cooperation with that because it is important that, you know, if we are gonna meet next meeting that we have a good, clear, clean copy of where we're at, at least right now. 'Cause for me, I mean, I've got stacks of papers that says this change and that change, and they're all in different sheets. And it's – my brain is fried over here. So it would be nice to get a new sheet, and I can get rid of this stack of paper, and go from there. So, okay, so that's what we'll do. We'll propose to put this on the next agenda. We'll keep working on it. When we get a completed copy, we'll give it to you. You can already see pretty much what our changes are for the most part. We can begin the process of talking about these internally so that we hand it to you, you don't have to start from scratch. You know, you can already be partway through the process. Mike, did you wanna say—?

Mr. Hopper: You want a copy of these when they're done to be forwarded to the Planning Department as well to start the comment process? Or do you wanna wait until after your next meeting before the Department comments?

Mr. Chaikin: Yeah, I think they have a copy already of where we're at. But when you get your mailing out, you're gonna mail it to us. Also, give them a copy. They can take a look at it, because that's, you know, gonna be 90% of the lot of the stuff. And then so it'll just speed up the process a little bit if you begin the process of looking at them. Okay, any other comments by Commissioners?

Ms. Buchanan: I don't know. I think I gotta give you guys all pineapples or something for the job you guys did. I'm really impressed with you folks' work. This has been a long time in the making. And I know the time constraints of you guys going off the Commission probably pushed you to getting this done. And that leads me to a second question because

I didn't hear any rumblings about people who were being appointed to this Commission, or who that people/persons might be. So I wanted to move to see if the Planning Director could petition the Council and the Mayor to keep the current makeup of the Board serving in an interim capacity at least until this draft is done for the rules, rule-making with the exception of bringing missing Members on board, but not to have Chair Chaikin and Commissioner Kalipi leave us at this point in time. Go ahead, Corp. Counsel.

Mr. Hopper: I'd say, A, that's probably not on your agenda today. And B, I think when their terms are up, I think there's a maximum term. They can participate pretty much in the same capacity, if you'd like. They can come to the meetings. And although they wouldn't be Chairing, but they could do almost all the stuff they're doing now as far as commenting. You can give them a microphone and say, okay, help us get through these. They could come. They wouldn't be Members. They wouldn't get to vote. But they could participate in the meetings. I already talked to Steve about that. I don't know of any way that they could be – their term could be extended because the Charter goes through what the terms have to be. And I don't think there's any way you can extend past that without the person leaving. Unless I'm mistaken, unless Clayton has seen something like that happened, but that would be the only problem with something like that happening.

Ms. Buchanan: I see Hawaiian Homes Commission Members, as well as Land Use Commission Members serving in interim capacity because they were unable to fill vacancies that was required under their Charters. So I was wondering if that was possible for us because I didn't hear from the Mayor's Office or from the County Council that we did have enough replacements for this Board. And if that was the issue, then I would want it to be agended on the next agenda that they still serve in an interim capacity. I see other Commissions are able to do that.

Mr. Chaikin: Well, in all fairness to those Members that may have been appointed to start their terms at the beginning of April, I wouldn't wanna, you know, take that away from them. But I don't know if that's the case. Clayton, do you have any information as to whether or not they've made any decisions on replacements for vacancies in this Commission?

Ms. McLean: Thank you, Chairman. The Mayor's Office is considering nominees. Those will be forwarded down to the Council for the Council to approve in time for those Commissioners to come on board in April. And in regards to your comment about those other Commissions, those are State Commissions. So they fall under State statute whereas this Commission, the terms are defined by the County Charter. And I agree with where you're coming from, I do, but the Charter is pretty clear. But there's another Commission, the Charter Commission. That's certainly something that could be suggested to the Charter Commission that there be some provision like you described in order to ensure that there aren't vacancies of continuing current Members until new appointees

could be made. That's something that could be put before the Charter Commission. Thank you.

Mr. Chaikin: Thanks for that clarification. Yeah, you know, it was my hope to finish the whole thing before the end of our terms, but we had this period where we had a whole lot of meetings that we canceled for one reason or another over the – that was the summer or something. So anyway, here we are. We're doing the best that we can. And I think that, you know, we'd made the changes that we recognize should be made. You have a copy of them. Next week, we'll have an opportunity to further refine those. And I think that by then, it'll be to the point where you and the new Commissioners would probably be able to move forward with that, if need be. So with that, I think we can move on with our agenda.

J. CHAIRPERSON'S REPORT

1. Improvements to the Planning Commission's and Planning Department's service to the community.

Mr. Chaikin: Okay, Chairperson's report, improvements to the Planning Commission's and Planning Department's service to the community. I think the rules are enough for that for today. So I'm gonna move on to the Director's report. And I turn the floor over to Clayton.

Mr. Yoshida: Mr. Chairman, Members of the Commission, I'll report on the four items that are listed on the agenda, and I guess the Director can add anything he wants to report.

K. DIRECTOR'S REPORT

- 1. Pending Molokai Applications**
- 2. Closed Molokai Applications**

Mr. Yoshida: We've circulated our list of pending and closed Molokai applications. Do Members have any questions on those? If there aren't any questions, moving on to the March 23rd agenda.

3. Agenda Items for the March 23, 2011 meeting

Mr. Yoshida: We have the carryover items from today's meeting, which are the Estefania Acoba power pole SMA assessment and the Bacon two-lot subdivision. We also have the two SMA assessments, which we'll try to bring forward before the Commission which – for the Molokai Federal Credit Union consolidation of two lots into one lot; and the Friendly Properties subdivision to grant a two-foot easement. Plus, I guess the carryover item from

today on the report from your Rules Committee, your Sub Committee. I guess you would – you could deliberate on that.

Mr. Chaikin: Right, we would wanna agenda that item so that we can deliberate and come to some conclusions. Maybe take action if we wanted to take action on something, because I think the report has been concluded. We've already finished our report, and now, it's up to the Commission as a whole to deal with those rules.

Mr. Yoshida: If there any other agenda items that you want for the—?

Mr. Chaikin: I'm not seeing any.

4. Discussions with Maui Electric Company on liability for power pole installations on private property. (N. McPherson)

Mr. Yoshida: I believe as far as the discussion with Maui Electric Company for the power pole installation, I believe that was discussed relative to the Estefania Acoba power pole SMA assessment. So that concludes my portion unless the Director or Deputy have anything else they wanna report.

Mr. Spence: Just one more comment for the Commissioners—we've heard a lot today about enforcement. And we will be talking to our Enforcement Division or to Nancy a little bit to see what we can do and we'll get back to the Commission on that. Obviously, a little bit of distance, but we'll work on that and see what we have in our budget, etc., for travel, and we'll try to make something happen for the island. Any questions for the Director?

Mr. Chaikin: No, I just think on behalf of the Commission, we'd like to thank you and Michelle for taking the time to be here because it really means a lot to this Commission when we have the Director come and even the Deputy Director be here. So I hope you can make it more often and really appreciate you being here. So, Commissioners, anything else before we conclude this meeting? Seeing none, at this time, I'd just like to thank everybody, the Commissioners. And our next regular scheduled meeting is on March 23rd. And so we'll see you all then. This meeting is now adjourned.

L. NEXT MEETING DATE: MARCH 23, 2011

M. ADJOURNMENT

There being no further business to come before the Commission, the meeting adjourned at 3:52 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Steve Chaikin, Chairperson
John Sprinzel, Vice-Chairperson
Nathaniel Bacon
Debra Kelly
Joseph Kalipi
Lori Buchanan

Excused

Mikiala Pescaia
Don Williams

Others

William Spence, Planning Director
Michele McLean, Deputy Planning Director
Clayton Yoshida, Planning Program Administrator
Nancy McPherson, Staff Planner
Michael Hopper, Deputy Corporation Counsel